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# The *Employment Equity Act Review*

A Report to the Standing  
Committee on Human Resources  
Development and the Status of  
Persons with Disabilities



Canada



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# **The *Employment Equity Act Review***

**A Report to the Standing Committee on  
Human Resources Development and the  
Status of Persons with Disabilities**

**December 2001**





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Minister of Labour



Ministre du Travail

Ottawa, Canada K1A 0J2

Mrs. Judi Longfield,  
MP for Whitby–Ajax and  
Chair, Standing Committee on Human Resources Development  
and the Status of Persons with Disabilities

Dear Colleague:

It is my pleasure to table, before the Standing Committee on Human Resources Development and the Status of Persons with Disabilities, a report reflecting the progress achieved under the *Employment Equity Act*.

Employment equity is about ensuring equal access to employment for women, persons with disabilities, Aboriginal peoples and members of visible minorities. This report presents a picture of how successfully employers in the federal jurisdiction, including Crown corporations, are implementing employment equity.

The report also contains feedback received through consultation meetings held across Canada with stakeholders, including representatives from employer associations, unions and the four designated groups.

Should you require further information, my officials or I will be pleased to assist you.

I look forward to seeing the results of your deliberations.

Sincerely,

Claudette Bradshaw  
Minister of Labour

Canada



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## **1. Executive Summary**

### **1.1 Context**

The 1996 *Employment Equity Act* requires a committee of the House of Commons to assess, every five years, the provisions of the Act, specifically their operation and their impact. The questions to be addressed are simple. Is the Act working? If not, why not? Can it be improved and if so, how?

In order to assist the Committee to answer these questions, officials held a series of consultation sessions across the country. They heard from representatives of employers, labour unions, and organisations that speak for, or are interested in, the four designated groups: women, Aboriginal peoples, persons with disabilities, and visible minorities. Nearly 350 people attended the meetings and another twenty sent in written comments. To facilitate the process, a Discussion Paper (Appendix A) was provided to participants (Appendix B).

In addition to the consultation meetings with stakeholders, a consultant was engaged to conduct an independent evaluation of the Federal Contractors' Program (FCP). The Legislated Employment Equity Program (LEEP) is currently being evaluated by another consultant firm. Labour Program staff also held meetings with a number of federal departments and agencies sharing an interest in employment equity. They include the Canadian Human Rights Commission, the Treasury Board Secretariat, and the Public Service Commission.

The latest statistics in this report were taken from employer reports reflecting workforce representation in 1999 and tabled in the Minister of Labour's annual report to Parliament in February 2001. The data show that persons with disabilities and Aboriginal peoples in the workforce covered by the Act are represented at rates well below their labour market availability. Women and visible minorities are fairly well represented in the workforce, but lag behind in several occupational categories, demonstrating a concentration in lower paying positions.

Employment equity is not just about numbers, but also fair employment policies and practices. The Canadian Human Rights Commission has not yet had an opportunity to audit all employers in the federal jurisdiction to ensure they have implemented, or have plans to implement, policies and practices to ensure a welcoming environment for all Canadians.

The intent of the *Employment Equity Act*, however, remains constant: to ensure all Canadians are provided with fair employment and promotion opportunities, and are treated with respect. Employment equity is not just the right thing to do. It is also the "bright" thing to do. This report includes a review of several studies showing the economic impact of employment equity, including one which concludes that under-utilisation of women and visible minorities costs the economy about \$40 billion annually in GNP.

## **1.2 Layout of this Report**

This report is designed to assist members of the Standing Committee on Human Resources Development and Persons with Disabilities in the review of the *Employment Equity Act* as mandated by that legislation. The current Act came into force October 24, 1996. Section 44(1), states:

“Five years after the coming into force of this Act, and at the end of every five year period thereafter, a **comprehensive review of the provisions and operation** of this Act, including the **effect of those provisions** shall be undertaken by such committee of the House of Commons as may be designated or established by the House for that purpose”.

In this report opinions expressed by stakeholders during the consultation sessions reflect the diversity within and between the designated groups and also regional differences. Indigenous Nova Scotian blacks, for example, have a different outlook within the visible minority community than immigrant Japanese high-tech workers in British Columbia.

The sections which follow are:

- Historic & Contemporary Overview**

Traces the development of employment equity, a non-quota based system different from the American affirmative action program. The original (1986) *Employment Equity Act* is described and the steps are traced which led to the 1996 Act.

- Other Jurisdictions**

Draws attention to Canada's leadership role in the international community and identifies provincial activity.

- Key Roles & Responsibilities**

Describes the roles and responsibilities of the key players (employers, Minister of Labour, President of the Treasury Board, Canadian Human Rights Commission).

- Social and Economic Impact of Employment Equity**

Examines economic benefits to Canada's productivity and links employment equity with major social programs aimed at poverty, the homeless, immigration and youth employment. Implementation of the 1986 Act focused on employment equity as the right thing to do in terms of fairness. Recent studies, however, demonstrate employment equity also has a significant positive impact on the corporate bottom-line.

- **Designated Groups**

Compares, briefly, federally regulated private sector employers, for which the Minister of Labour is responsible, and the federal public service, which falls under the jurisdiction of the President of the Treasury Board. Within the federally regulated private sector, the progress of each designated group is traced since the first reporting year of 1988 through the 1999 reporting year. Barriers to recruitment and promotion are discussed.

- **Consultations with Stakeholders**

Categorises and summarises comments expressed during the consultation meetings with stakeholders. In addition, a series of quotes is appended to this report.

- **Program Considerations**

Outlines some of the difficulties experienced in the administration and implementation of the program. These are areas currently being addressed by staff and may not require a legislative solution. They are presented to round out the description of the employment equity program in practice and to ensure that the committee members have a complete picture of operational issues.

- **Postscript**

Consolidates and summarises the above information.

## 2. Historical & Contemporary Context

During the 1970s and 1980s, there was an increasing recognition in Canada of the negative impact of systemic discrimination. Although discrimination was prohibited under human rights statutes, there was a growing awareness that proactive steps were required to change systems and practices which had become entrenched in a traditionally white male dominated workplace. Initially this led to a number of voluntary programs in the federal sector targeted at official languages, women, Aboriginal peoples, persons with disabilities and blacks in Nova Scotia. While major gains were made for francophones, the problems for women and blacks were more deeply embedded. This attitudinal change coincided with an increasing emphasis on legal tools to effect change. For example, the 1982 *Charter of Rights and Freedoms* takes a substantive rather than a formalistic approach to equality. Indeed, the drafters included subsection 15(2) to ensure that programs aimed at improving the conditions of disadvantaged groups by a misplaced emphasis on formalistic equality. The Supreme Court of Canada has confirmed that s. 15(1) “can embrace ameliorative programs of the kind that are contemplated by s. 15(2).”<sup>1</sup>

On June 27, 1983, the Government of Canada announced the establishment of the Royal Commission on Equality in Employment. Its terms of reference required the Commission to:

“Explore the most efficient, effective and equitable means of promoting equality in employment for four groups: women, native people, disabled persons, and visible minorities”.

The report, tabled on November 29, 1984 by Judge Rosalie Abella, used the term “employment equity” to distinguish the Canadian initiative from American affirmative action programs which had been associated with quotas<sup>2</sup>. The recommendations led to the enactment of the first *Employment Equity Act* in 1986. It promoted employment equity as the right thing to do and reflected the Canadian value of fairness while demonstrating that Canada was encouraging workforce participation of the four designated groups: women, Aboriginal peoples, people with disabilities, and visible minorities. The stated purpose of the Act was and still is:

“...to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons the same way but also requires special measures and the accommodation of differences”.

The 1986 *Employment Equity Act* covered federally regulated companies with 100 or more employees. These employers operate primarily in the banking, transportation, and communications industries. Employers were required to identify workplace barriers and to develop and implement equity plans for the four designated groups. Employers were also required to report annually to the responsible Minister, currently the Minister of Labour, on the representation of target groups within their workforce. There were no enforcement mechanisms in the Act, other than for failure to report. The intent was that employers would be encouraged to implement employment equity based on public scrutiny of the reports and knowledge that the data could be used to file systemic discrimination complaints under the *Canadian Human Rights Act*. A Federal Contractors Program for employment equity was also created in 1986 requiring enterprises with 100 or more employees doing business with the federal government to certify their commitment to implement employment equity initiatives in order to bid on contracts over \$200,000.

In 1991, a Committee of the House of Commons, with a mandate to review the *Employment Equity Act*, heard from many major stakeholders and those with special interest in equity issues. Entitled *A Matter of Fairness*, the report contained recommendations to improve the effectiveness of the Act including inclusion of the federal public service, elaboration of guidelines to assist employers in the implementation of the Act, and empowerment of the Canadian Human Rights Commission (CHRC) to monitor and enforce the Act. In 1992, the legislative mandate for employment equity in the federal public service was given to the Treasury Board and the Public Service Commission, through the *Public Service Employment Act* and *Financial Administration Act*.

The new *Employment Equity Act* of 1996 was introduced as Bill C-64. Between November 1994 and June 1995, the Standing Committee on Human Rights and the Status of Disabled Persons reviewed both Bill C-64 and the then existing *Employment Equity Act*.

A new *Employment Equity Act* received royal assent on December 15, 1995, and subsequently came into force on October 24, 1996. This Act extends coverage to the federal public service, mandates the Canadian Human Rights Commission (CHRC) to conduct on-site compliance reviews, and provides for final enforcement of the *Act*, where necessary, by an Employment Equity Review Tribunal, empowered to hear disputes and issue orders. The Minister of Labour is responsible for advising employers, analysing employers' reports, reporting to Parliament on progress achieved and implementing the Federal Contractors Program. The Act also mandates a review of the legislation to be undertaken every five years by a committee of the House of Commons.

### **3. Other Jurisdictions**

#### **3.1 International**

In the current context of economic globalisation, and in the face of increasing international competition, the need to take advantage of the wide pool of available individuals in the workforce cannot be overstated. Women, people with disabilities and racial minorities constitute more than half of the workforce in many communities. Governments are becoming increasingly aware of the potential of these groups to contribute to the economy and the need for effective legislation, programs and policies to address barriers they now encounter.

Internationally, Canada is recognised as a world leader in welcoming diversity and including all ethnic and racial groups in the nation's social and economic life. Canada has one "umbrella" piece of legislation for its four designated groups, while most other industrialised countries have fragmented legislation. We can mention, for example, Australia, Great Britain, Sweden, the Netherlands, and the United States which have been the focus for international comparison studies on employment equity<sup>3</sup>.

Despite the differences in legislative framework between the countries, there are some similarities in programs and the targeted groups. In general, countries tend to set up two categories of programs: general programs addressing all jobseekers' needs, with particular attention to disadvantaged groups, and specific programs for each designated group.

Australia has developed a panoply of laws protecting the rights of its disadvantaged groups: racial minorities (including Aboriginal people), women and persons with disabilities. The *Racial Discrimination Act* was enacted in 1975, the *Sex Discrimination Act* was enacted in 1984, and a legislative framework for the protection of persons with disabilities took effect in 1992. The Australian federal government has also set up a wide range of programs to support its employment equity legislation. Some programs have general orientations but others pay particular attention to disadvantaged groups only.

In Great Britain, three main pieces of legislation form the cornerstone of the Government's platform for equal opportunities: the 1976 *Race Relations Act*, the 1975 *Sex Discrimination Act* and the 1995 *Disability Discrimination Act*. Great Britain's approach to programming for equal opportunities follows the legislative framework with a Commission assigned to each of the three pieces of legislation.

Sweden has two main pieces of legislation: the *Ethnic Discrimination Act* and the *Equal Opportunities Act*. It pursues the general goal of full participation in the labour force for all members of society. Ombudspersons are also assigned to women, visible minorities and people with disabilities with the objective of providing compensation to those who are victims of discrimination.

The Netherlands' equality legislation is focused on improvement of the representation of ethnic minorities and disabled people in the workplace. Its programs tend to be more specific. Mainly, federal employment equity programs target three groups: persons with disabilities, women and ethnic minorities.

In the United States, a number of laws and programs protect women, individuals who are over 40 years of age, persons with disabilities, war veterans and racial minorities. Affirmative action programs are fragmented and the complaint system is court-oriented. Legislation has been in place for 30 years but progress is uneven.

South Africa is another country with noteworthy equity legislation. In 1998, under the presidency of Nelson Mandella (Canada's second honourary citizen), it passed legislation modelled after the Canadian *Employment Equity Act*.

### **3.2 Provincial and Territorial**

Provincial employment equity policies and programs are highly variable and uneven. At present, eight provinces in Canada have some sort of employment equity policy in place: British Columbia, Manitoba, Ontario, Saskatchewan, Quebec, Nova Scotia, New Brunswick and Prince Edward Island. With the exception of Quebec, provincial employment equity policies apply only to the public service.

Quebec has just taken a positive step regarding employment equity by implementing *An Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms* as of April 1, 2001. This Act applies to all public bodies with 100 or more employees in the municipal sector and in the education, health and social service systems. It also applies to other organizations, such as Crown corporations, and the *Sûreté du Québec* with regard to its police force. It is designed to promote employment equity for women, Aboriginal people, members of visible minorities and members of ethnic minorities whose mother tongue is neither English nor French.

Enforcing the Quebec legislation is the responsibility of the *Commission des droits de la personne et des droits de la jeunesse*. Employers subject to the Act must first conduct an analysis of their workforce and report to the Commission. After comparing these analyses with current statistics, the Commission informs employers of any groups that are under-represented within their companies and orders them to develop positive policies or an employment equity program. When employers develop their programs, they must consult employees and their representatives. These programs are then examined by the Commission, which can make recommendations if an employer has failed to comply with its orders. Every three years, each employer covered by the Act is required to submit a report to the Commission regarding the implementation and results of its program. Any conflict arising between an employer and the Commission with regard to submitting reports and/or complying with recommendations is resolved by the *Tribunal des droits de la personne*.

In Ontario, employment equity legislation was enacted in 1993 but was repealed less than two years later and replaced by *Equality of opportunity* policy for the public service.

Newfoundland and Alberta do not have equity legislation or policies. As for Newfoundland, what little discussion has taken place focussed only on gender equality; discussions in Alberta were limited to a lively debate with no legislation being enacted.

## **4. Key Roles And Responsibilities Under The Act**

This section highlights the roles and responsibilities of the key players under the *Employment Equity Act*.

### **4.1 Types of Employers Covered by the Act**

Several different types of employers are covered by the *Employment Equity Act*, including private sector employers with 100 or more employees that fall under federal jurisdiction, the Treasury Board, and separate employers. In total, employees represented by these employers account for 10% of the Canadian workforce.

#### *4.1.1 Federally Regulated Employers*

The largest group of employers directly subject to the Act are federally-regulated private sector employers and Crown Corporations with over 100 employees. At present almost 620,000 Canadians are engaged by about 410 federally-regulated employers. Most of these employers are in the banking, transportation, and communication industries.

#### *4.1.2 Public Sector*

The 1996 *Employment Equity Act* expanded coverage to the federal Public Service. Under Schedule I Part I of the *Public Service Staff Relations Act*, the Treasury Board is the employer for 66 departments with a workforce of 150,000 people. The Public Service Commission shares employer responsibilities under the *Employment Equity Act*. All departments, regardless of size, are subject to the Act.

The 1996 Act, upon orders of the Governor in Council, also provided coverage to the Canadian Security and Intelligence System and to uniformed members of the Canadian Armed Forces and the Royal Canadian Mounted Police. The orders need to receive the recommendation of the Treasury Board and be processed by the Privy Council Office.

#### *4.1.3 Separate Employers*

Separate employers are special operating agencies or corporations under Schedule I Part II of the *Public Service Staff Relations Act*. They are outside the traditional public service and are subject to the Act if they employ 100 employees or more. In 1996, there were just over half a dozen. Today, there are approximately 30, 15 of which have 100 or more employees, including the Canada Custom and Revenue Agency, the Canadian Food Inspection Agency, the National Capital Commission, the Office of the Auditor-General, and the National Film Board. These employers engage approximately 60,000 individuals.

#### **4.1.4 Federal Contractors**

The Federal Contractors' Program (FCP) requires non-federally regulated contractors with 100 or more employees who bid on contracts of \$200,000 or more to commit to, and implement, employment equity. These 845 employers represent approximately 1.1 million employees. The Minister of Labour is responsible for administering the program.

### **4.2 Responsibilities of Employers Covered by the Act**

All employers have similar responsibilities. A key stage is identifying the equity issues in their workplace. This involves, first, a workforce analysis. It is essentially an assessment of whether the designated groups are under-represented in the occupational groups in their workforce, based on a self-identification survey of their employees. This internal information is then compared to labour market availability data. These data are provided by the Minister of Labour to private sector employers, and by the President of the Treasury Board, in concert with the Public Service Commission, to federal government departments. Next, a review of their employment systems, policies and practices is conducted to determine whether they pose barriers to the designated groups. Employers must consult and collaborate with unions and employee representatives in identifying the issues and preparing the plan.

An employment equity plan is prepared once the issues have been identified. The plan should eliminate barriers that obstruct the hiring and promotion of designated group members, establish positive policies and set short-term and longer-term numerical goals to ensure that reasonable progress is made in addressing any under-representation. These goals are flexible targets, which may be adjusted, and should not be confused with the quota system used for U.S. affirmative action programs. In fact, section 33(e) of the Act specifically prohibits the Employment Equity Tribunal from imposing quotas. Finally, the employer implements the plan and monitors its implementation to assess whether modifications are needed.

Private sector employers file statistical reports on an annual basis with the Minister of Labour, while public sector departments file reports with the Treasury Board Secretariat. Separate employers file reports with the Treasury Board which tables them, without analysis, in Parliament. All employers are also required to co-operate with the Canadian Human Rights Commission when it conducts compliance audits. This includes keeping accurate records to assist the Commission in its reviews.

### **4.3 Minister of Labour**

The Minister of Labour has key responsibilities under the *Employment Equity Act*. These include analysing employer reports, providing labour market information, data, public education and advice to private sector employers, and the administration of the Federal Contractors' Program. The federally-regulated private sector program is administered by the Legislated Employment Equity Program (LEEP) of the Labour Program of Human

Resources Development Canada. Each June, private sector employers must file reports with the Minister of Labour on their workforce representation for the previous year. The Minister makes these reports publicly available, provides them to the CHRC and files a report to Parliament, which consolidates and analyses the data, no later than 15 sitting days after the report is completed. The 1996 Act provides the Minister with the authority to issue administrative monetary penalties, a fact that is frequently communicated to employers to persuade them to meet the reporting obligations.

The Minister of Labour is mandated to make available relevant labour market information on workers, or those actively seeking work, who are members of designated groups and who are qualified or eligible for the jobs within each occupational group of the employer's workforce. This information is used to determine the representation in the geographical area or areas from which the employer may reasonably be expected to draw employees.

A second key responsibility is public education and guidance to private sector employers, in the form of information, guidelines and advice. For example, tools and guidelines were developed over the past five years to assist employers in meeting their obligations under the Act, including a set of 11 guidelines ranging from setting up an employee survey, to conducting a workforce analysis. A reporting manual is provided to assist employers with the annual reporting responsibility. An Employment Equity Computerised Reporting System (EECRS) was produced and distributed to employers to facilitate electronic reporting and to reduce reporting burdens. Also, a web site was created to provide documentation and other information on the Act.

A third key responsibility is the administration of the *Federal Contractors' Program* (FCP). The FCP covers companies with 100 employees or more that submit bids or tender for contracts for goods or services valued at over \$200,000. These employers are obligated to certify their commitment to implement employment equity initiatives in order to bid as a condition of their contract. The Act specifies that the requirements of the Program are to be equivalent to those under the *Employment Equity Act*. At present, 845 FCP employers have a workforce of 1,100,000 people.

#### **4.4 President of Treasury Board**

The President of the Treasury Board has similar responsibilities for the public service to the Minister of Labour for private sector employers. Departments and agencies submit their annual reports directly to Treasury Board. The President of the Treasury Board then sends copies of the reports to the Canadian Human Rights Commission and presents an overall analysis and review to Parliament. The President of Treasury Board also determines the availability data for departments. Reports from separate employers are tabled without analysis.

## **4.5 Canadian Human Rights Commission (CHRC)**

One of the key initiatives in the 1996 Act was to provide the CHRC with the power to conduct compliance audits, negotiate undertakings and issue directions. The Act specifies that non-compliance is to be resolved by focusing on persuasion, with directions to be issued as a last resort. Employers may contest directions before the Employment Equity Tribunal, while the CHRC may apply to the Tribunal for an order confirming a direction if an employer is not complying. The Tribunal may confirm, vary or rescind the Commission's direction. A Tribunal order is enforceable as an order of the Federal Court.

The Commission commenced its audits in 1998 and by October, 2001, had completed 340 audits, including initial audits and follow-up audits, with 113 ongoing and 70 employers in compliance.<sup>4</sup> (Employers are in compliance when they have an employment equity plan to eliminate barriers and rectify under-representation, not just when they have equitable representation and policies and practices.) Twenty directions have been issued but no case has been heard by the Employment Equity Tribunal. The Commission noted that, because it had focused on larger employers, it has audited 87% of the public sector and 61% of the private sector workforce. It is on track for an estimated seven year audit cycle despite the necessity of re-visiting many employers who took no action until Commission auditors returned. (Of the 70 employers who are in compliance, only 8 were in compliance initially). The Commission is now scheduling return visits to verify that employers are taking reasonable steps to implement their employment equity plans.

## 5. Social and Economic Impact of Employment Equity

“Reducing inequality isn’t just moral – it’s economically efficient as it fosters economic growth”<sup>5</sup>.

The *Employment Equity Act* has far-reaching social and economic implications for Canada. Employment equity was introduced in 1986 as the right thing to do, reflecting the Canadian value of fairness. More recently, it has become recognised as the bright thing to do, as it contributes to Canadian prosperity in a globalised world economy. Equity is no longer viewed as an issue of distribution of wealth but also of production of wealth. It helps to get more people into productive jobs and it improves the distribution of wealth which ultimately helps reduce social tension. A country cannot achieve a winning economic policy without an equally strong social policy.

### 5.1 Equity and Inclusion

Employment equity encourages the redistribution of opportunities and ultimately of opportunities and wealth to all skilled and willing members of society. This reduces resentment on the part of the less fortunate, and promotes their participation in society, thus fostering inclusion, social solidarity and cohesion.

Twentieth century dogma maintained you could either sustain efficiency, and thus produce greater wealth, or alternatively, sustain equity, and creating less wealth but better distribution. Researchers have been re-assessing these traditional theories, however, and discovered that achieving equity leads to higher standards of living for everybody. One seminal study suggests:

“..the reduction of inequality in Canadian society should be high on the priority list for government action...It makes sense to address this issue not only for equity reasons, but also for efficiency reasons as reducing inequality can, in the medium-to-long run, foster economic growth”<sup>6</sup>

Canada’s real wealth lies in large part with the skills of the population. Inequity impedes development because low-income persons have fewer financial resources and limited access to credit, and thus less ability to achieve a decent level of education. A more equal distribution of income could spur greater human capital accumulation for the less advantaged and have a positive effect on output and growth.

The purpose of legislation such as the *Employment Equity Act* is not only to bring about fairness, but also to encourage employers to take advantage of the knowledge and skills of all Canadians.

## **5.2 Globalisation and the Workplace**

In the past ten years, Canadians have witnessed a new world of emerging technologies, converging international markets and trading arrangements. This has created a huge impact on the types of occupations in the Canadian labour market and on industrial structures and stratification. These changes have helped to shape the way we view labour relations, wage structures, education, and the role of government, unions, and employers. As a result employment equity will be even more important in the economy of the 21<sup>st</sup> century. Canadians will be working in a multidisciplinary environment, and the participation in the workforce of members of designated groups will increase in all occupations, considering improvements in health, education and life expectancy. All designated groups, including visible minorities, will be viewed in the context of a global labour market where relevant skills are becoming scarce. Skilled persons with disabilities will represent a greater number of Canadians within the ageing population and the need to accommodate limitations resulting from disabilities will increase. Aboriginal peoples will face the impact of globalisation on local cultures and Canadian society in general, while at the same time providing the skills required for more self government.

## **5.3 The Knowledge Based Economy**

The 21<sup>st</sup> century economy is now being fuelled by brainpower. Industrialised countries have experienced a considerable shift from dependence on natural resources and manufactured goods to a knowledge-based labour market. Members of the four designated groups represent a strategic resource in an economy crucially dependent on human capital.

Even employment trends are shifting. Modern economies are now measured by know-how and economic growth is driven by innovation. Over the past five years, over two million jobs were created for people with university and post-secondary education and 139,000 with secondary education. However, almost a million Canadians with primary or no education lost their jobs in the same period.

Productivity has increased in the past decade but knowledge-based workers are becoming scarce. The number of graduates is not meeting the rising demand in the labour market for certain skills. In a knowledge-based economy, the under-utilisation of skills has an even greater cost to the Canadian GDP. Failure to embrace the knowledge revolution in a global economy will result in giving up rare human resources to other nations.

“In the past, workforces were homogenous by legal or customary exclusion or due to physical isolation. Now, not only ideas but workers and their families are spreading around the world, changing the assumptions of societies and cultures that receive and welcome them”<sup>7</sup>

Many of these skilled people are available in the labour market, but if they are not being hired into the workforce, employers, individuals, and the Canadian economy all lose. Employers cannot ignore the real and potential costs of ignoring the skills and talents of all Canadians. In a globalised market, countries with knowledge of more languages fare better<sup>8</sup>. Aside from the two official languages, Canadian diversity guarantees a stock of heritage languages that could be exploited in the new economy. The top seven languages other than English or French are Chinese, Italian, German, Spanish, Portuguese, Arabic, and Polish.

#### **5.4 The Shortage of Skills**

Immigration is regarded as a positive factor in the Canadian economy. It contributes skills and replenishes the declining population. Canada receives approximately 225,000 immigrants every year, almost 75% of whom are likely to come from visible minority source countries. There has been much discussion recently about the shortage of skills and the coming crisis of diminishing human resources in Canada. HRDC studies have shown a need for over a million skilled individuals in key industries over the next ten years. The growing number of opportunities for Canadians to work elsewhere, mainly the United States, is making this shortage more acute, as almost 40,000 talented Canadians leave every year<sup>9</sup>.

The ageing of the Canadian workforce is another factor that contributes to this shortage. People are spending fewer active years in the labour market: in 1921 the average Canadian spent 45 years in active participation, but by 1986, this had dropped to 39. The average person lives 12 years longer, but the added longevity is spent in retirement. This demographic shift will lead to a search for replenishing the workforce through immigration, extending the retirement age, accommodating skilled individuals, and better use of women, Aboriginal peoples, persons with disabilities and visible minorities.

#### **5.5 The Cost of Under-Employment**

While the loss of Canadian talent to other countries is offset by a “brain gain” due to immigration, the issue is far from resolved. Even if immigration policies have achieved considerable success in attracting skilled individuals by their emphasis on education and other forms of human capital, the task remains to integrate these talents into a barrier-free Canadian labour market.

Evidence indicates that occupational discrimination and wage discrimination in the Canadian labour market results from the under-utilisation of the talents of the four designated groups. The loss from under-utilisation of human resources is a serious one and is tantamount to a “brain waste”<sup>10</sup>. With a portion of the workforce under-employed and underpaid, the costs are borne by these individuals, and ultimately by the economy as a whole. A typical illustration of this situation is a visible minority person holding a Ph.D. driving a taxi, or a woman with a finance degree working as a bank teller.

A recent study conducted by University of Toronto Professor Edward Harvey focused on the under-utilisation of women and visible minorities, many of whom are concentrated in low paying jobs, to state that under-employment may be costing the Canadian economy as much as \$40 billion, or 4% of the GDP, annually.<sup>11</sup> Also, the 1996 Report of the Royal Commission on Aboriginal Peoples estimated the cost for the under-utilisation of Aboriginal peoples at approximately \$7.5 billion in 1996 alone. The message from this study and other research is clear: inequality costs the Canadian economy money. This issue can be expected to be increasingly important as Canada, like other nations, evolves rapidly toward a knowledge-based economy based on human capital. Such economies cannot afford artificial barriers that produce discrimination and under-employment of certain groups in the labour market. Employment equity policies have a vital role to play because they focus on occupational desegregation and foster expanded and more efficient use of human resources.

## **5.6 The Business Case**

In the labour intensive service industries, many employers have indicated that a diverse workforce makes them more competitive. The banks can serve a multi-ethnic multi-lingual clientele by having diverse personnel, which contributes to the company's financial bottom line<sup>12</sup>. Banks in Toronto (the most diverse city in the world), for example, hire people from the immediate communities they serve, improving their linkages to clients while creating employment for members within the local community.

Implementing employment equity has also led to an overall improvement in human resources management practices, and to a modern corporate culture that speaks a universal language that is useful in a globalised economy<sup>13</sup>. A company with no barriers in its employment systems will have an improved image, a solid team, and strong human resources management.

## **5.7 Linkage to Poverty and Homelessness**

Four million Canadians live under the poverty line (12%-13%)<sup>14</sup>. Women, visible minorities, Aboriginal peoples, and persons with disabilities make up 60% of the Canadian labour force, yet they face a disproportionate level of poverty, homelessness, and lower access to job opportunities. Forty-five per cent of single mothers live in poverty, against 12-13% of all Canadians. On a gender basis, 13% of all women live in poverty against 11.4% of all men<sup>15</sup>.

Another method for measuring social stratification is the proportion of Canadians earning a low income (\$17,132 or less). A disproportionate percentage of the designated group population earns less than this cut-off compared to the non-designated population. While 40% of all individual Canadian workers earned \$17,000 or less in 1996, the percentage was 66% for the Aboriginal population, and even higher for Aboriginal women and visible minority women. The Aboriginal People's Survey showed incomes for Canada's

Aboriginal population to be much lower than the national average. The most recent data on persons with disabilities<sup>16</sup> show that 60% of women with disabilities and 36% of men with disabilities have low incomes.

The 1997 *Survey of Consumer Finances* showed lone parents, disabled persons, recent immigrants and single persons over 45 were at high-risk of being poor. Within the female workforce, single working mothers live in a vicious circle of poor education and poverty: 43% of single parents live at or below the poverty line.

Employer reports submitted annually to HRDC/Labour, Employment Equity reveal the existence of ghettos and poverty pockets in the labour force under the *Employment Equity Act* for all four designated groups. The Act calls not only for the recruitment of skilled members of the designated groups but for their promotion in the workplace. The ratings in the Minister's Annual Report measure the progress of employers in promoting employment equity in their respective workforces.

For example, while women make up over 70% of the workforce in the banking industry, a substantial number are still in low-paying clerical and support staff positions. Positive measures and pro-active removal of barriers would allow women to improve their skills and realise higher salaries.

Canada has developed social programs to help combat poverty within the four designated groups. A longer-term solution that will guarantee all Canadians a decent standard of living will depend on better education, health, and housing for the poor.

Homelessness is directly related to poverty. Those caught in the cycle of poverty and homelessness cannot be expected to contribute to society and are viewed by some observers as a liability.

Current statistics suggest almost one in seven Canadian youth under 18 live below the poverty line (identified as the low income-after-tax-cut-off), a higher proportion than in 1989. Even when educated, youth have difficulties entering the labour market. Designated groups make up the majority of young, post-secondary graduates (almost 70% of the total), emphasising the need for employment equity to remove the barriers confronting these young people when they enter the labour market.

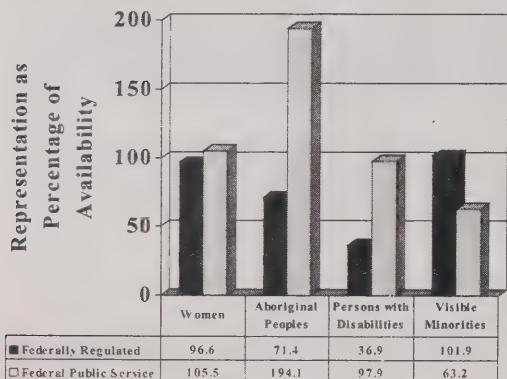
## 6. Designated Groups

### 6.1 The Federally Regulated Private Sector and the Public Service

The following four sections outline the progress under the Act and relevant issues affecting the four designated groups in the federally regulated private sector, the sector which was covered by the first *Employment Equity Act* of 1986. This coverage continues under the current legislation, providing the private sector with the longest period over which the impact of employment equity legislation can be studied.

### 6.2 An Overview

The information below is meant to give a quick overview of differences and similarities between private sector employers under the Act and the federal public service. Bearing in mind that the following four sections relate to designated groups in the federally regulated private sector, the graph below provides a snapshot of the 1999 calendar year for federally regulated employers and the 98/99 fiscal year for the federal public service.



The bars show the ratio of representation of each group in the workplace over its workforce availability. At 100%, representation equals the applicable labour market availability. Note that in the private sector, the members of the available workforce are in age groups 15 and over. In the public sector the age range is 18-65 and the members are Canadian citizens. Also, the labour market availability data is based on fewer occupational groups since not all private sector jobs exist in the public service.

#### 6.2.1 Women:

In the federally regulated private sector the representation of women (44.8%) was lower than their labour market availability (46.4%). In the public sector women's representation (51.4%) is higher than public sector availability (48.7%).

#### 6.2.2 Aboriginal Peoples:

Aboriginal peoples make up 1.5% of the federally regulated private sector workforce and their representation is below the labour market availability (2.1%). In the public sector, Aboriginal peoples constitute 3.3% compared to a public sector workforce availability of 1.7%.

#### *6.2.3 Persons with Disabilities:*

Persons with disabilities are more highly represented, based on their labour force availability in the public sector, than in the federally regulated private sector. Persons with disabilities may have benefited from the physical accommodation requirements required by the Government of Canada to serve the people of Canada. While the Treasury Board Secretariat, as employer, has provided specific accommodation needs for persons with disabilities, physical access to government buildings was, in many cases, available early and tangentially to accommodate the visiting public.

#### *6.2.4 Visible Minorities:*

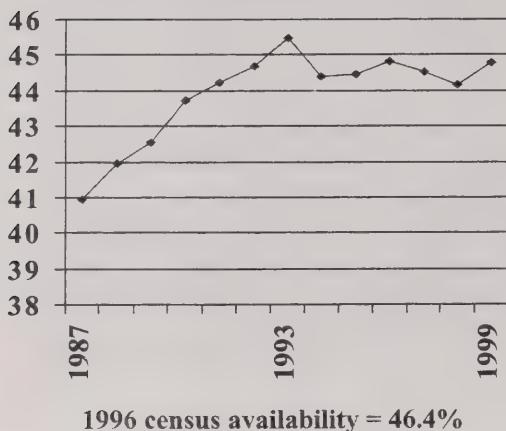
In the federally regulated private sector the representation of visible members (10.5%) is slightly higher than their labour market availability (10.3%). However, the data show a serious under-representation of visible minorities in the public sector. Their representation (5.5%) and hiring (5.7%) are at rates significantly below their availability, even when the availability is restricted to Canadian citizens. The Supreme Court of Canada has reserved its decision in the *Lavoie* case, a *Charter* challenge to the provisions of the *Public Service Employment Act* mandating the citizenship preference<sup>17</sup>.

## 6.3 Women

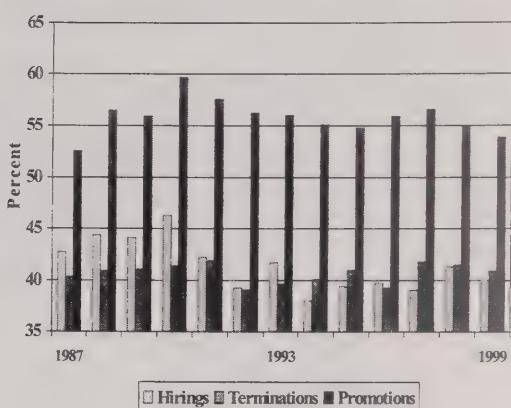
### 6.3.1 Federally Regulated Private Sector

#### % Representation

#### Year-by-Year Changes



1996 census availability = 46.4%



*Overall Representation:* Since the 1986 *Employment Equity Act* the representation of women in the federally regulated private sector workforce covered by the Act has increased significantly from 40.9% in the 1987 reporting year to a peak of 45.5% in 1993, almost matching the 1991 workforce availability data for women. Since then, apart from some minor fluctuations, the numbers have remained fairly constant. The 1999 representation was 44.8%.

*Hires and Terminations:* Overall, there are fewer hirings than when the Act began, and were reported at 39.8% of the total hirings in 1999, down from 41.3% in the previous year. For the last three reporting years, terminations of women have exceeded hirings. In 1999, 40.9% of total terminations were women, a figure which has historically wavered between 39.2% and 41.9%.

*Promotions and Occupational Segregation:* The number of promotions given to women has fluctuated from a low of 52.5% of total promotions given in 1987 to a high of 59.7% in 1990. Good progress has been made in occupations previously viewed as non-traditional for women and in 1999, women received 53.9% of promotions. Women's average salary against men's has increased, further reducing the wage gap. In 1999, women in the workforce working full-time under the Act earned 77.6% of men's average salary, up from 75.9% in 1996.

### 6.3.2 Public Sector

*Overall Representation:* More than half of all employees are women (51.4%), almost the same proportion as a year earlier. The population of both indeterminate and term employees increased. Just about half of all indeterminate employees (49.7%) are women, a similar situation to a year ago (49.2%). Women continue to make up over 6 in 10 of all term employees (61.6%), although the proportion has declined from previous years. Fewer than a quarter of all seasonal employees are women.

The proportion of women who are also members of another designated group (for example, Aboriginal women) increased over the fiscal year to 14.3% from 13.7% in 1998–99. The actual numbers decreased, however, to 10,383 from 12,567 in 1998–99, largely because data on Revenue Canada employees are not included. This organisation became a separate employer and was renamed the Canada Customs and Revenue Agency in 1999.

*Hires and Terminations:* Close to 6 of 10 persons hired into the federal Public Service were women, the same proportion as for the past three years.

*Promotions and Occupational Segregation:* In 1999, women received close to 6 in 10 of all promotions, similar to last year's share. Continuing the firm trend noted throughout the 1990s, the proportion of women in the Executive category increased by more than one percentage point to 28.4% from 26.9%.

### 6.3.3 Main Barriers

*Glass Ceiling:* The “glass ceiling” continues to exist for women in the workforce. As previously stated, in 1999, women received fewer promotions than in 1998, at 53.9% of all employees promoted in the workforce under the Act. However, women's share of promotions was higher than their representation (51.4%) and higher than men's share of promotion at 46.1% in 1999. Nevertheless, women in the workforce under the *Act* in 1999 were highly concentrated in clerical-related occupations. Compared to 1998, women had a lower share of hiring in the workforce under the *Act* in 1999.

In the public sector, representation data for women slightly exceed labour market availability, but significant clusters remain in clerical and support staff positions. Women are still under-represented in the executive category (less than 30%), indicating that a glass ceiling persists. Many of the barriers faced by women in the public sector, such as work-family conflict, the glass ceiling, and concentration, are shared with women in the private sector. These factors will be outlined in more detail the section that follows.

*Pink-Collar Ghettos:* While women have increased their representation in non-traditional occupations, they continue to be concentrated in traditional jobs, such as clerical and retail positions. Women comprise the majority of students in the social sciences, education, and health<sup>18</sup>. Men, in contrast, are concentrated in engineering, applied sciences, mathematics, and physical sciences, although it should be noted that women aged 20 to 29 have greater representation in these areas than in previous years.<sup>19</sup>

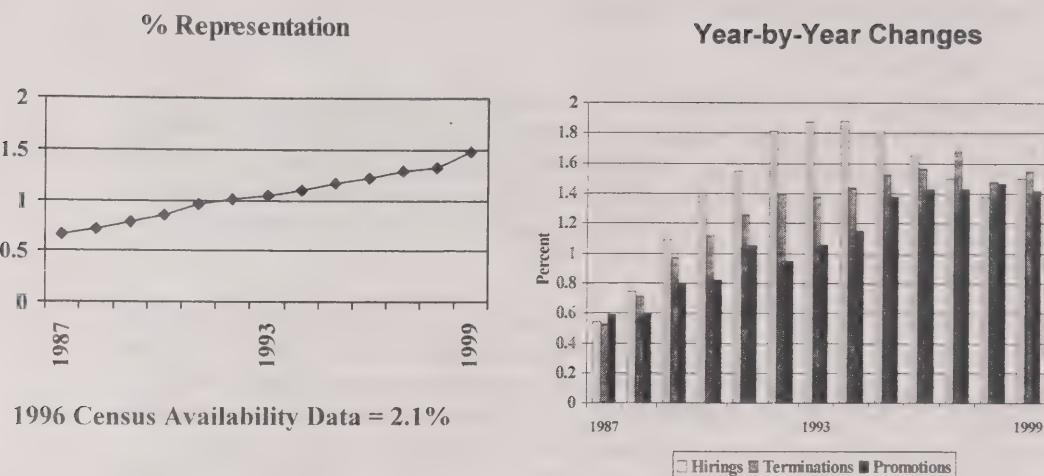
Education in traditionally female areas often leads to jobs and careers in lower paying occupations with potentially less opportunity for advancement. These positions are the lowest paying perpetuating the aforementioned glass ceiling analogy. Salary gap is not a pure employment equity issue but still merits attention. The average woman working full-time in the workforce under the Act currently earns 77.6% of men's average salary. Although the gap is narrowing women remain concentrated in low-paying jobs.

*Double/Triple Jeopardy:* Double or triple jeopardy for some women, encountered as a result of belonging to more than one designated group, has been a prevalent theme throughout the consultation process. Progress for women in double or triple jeopardy situations, particularly for Aboriginal women with disabilities who are the most disadvantaged of all groups covered under the Act, has been slow and some feel this issue needs to be specifically addressed in the legislation.

*Work-Family Conflict:* Women are often caught in the situation of “Work-Family Conflict”, in which they either participate fully, or opt for part-time employment, in the labour force while assuming a heavy load of household and family responsibilities. Reasonable accommodation in the workplace, such as child care or flexible work hours, could alleviate this problem, thereby reducing stress and increasing both satisfaction and productivity in women’s lives.<sup>20</sup>

## 6.4 Aboriginal Peoples

### 6.4.1 Federally Regulated Private Sector



*Overall Representation:* Since the enactment of the *Employment Equity Act*, there has been a slight increase in the representation of Aboriginal peoples in the workforce under the Act. However, there is still a significant under-representation problem. In 1987, representation was 0.7% of availability levels; by 1999 it had only reached 1.5%.

*Hires and Terminations:* Not only is there a hiring problem, but also a major retention problem which is partially illustrated in the statistics above. In 1999, for the fifth year in a row, Aboriginal terminations exceeded 1,000.

*Promotions:* Aboriginal share of promotions dropped from 1.5% to 1.4% in 1999, or from 914 promotions in 1998 to 737 promotions in 1999. Many Aboriginal employees who manage to obtain jobs do not remain in them long enough to be promoted.

### 6.4.2 Public Sector

*Overall Representation:* Aboriginal peoples accounted for 3.3% of the federal public service workforce, up from 2.9% on March 31, 1999. Among large departments, Indian and Northern Affairs Canada continues to employ the highest proportion of Aboriginal employees at 28.5%.

*Hires and Terminations:* Aboriginal peoples make up 3.9% of all new hires into the federal Public Service, up from 3.3% a year earlier. In terms of type of employment, most new Aboriginal employees (81.2%) were hired for a specified term. Almost

three-quarters of all Aboriginal peoples who separated from the federal Public Service were term employees; the converse, one quarter, were indeterminate employees, down from almost half compared with last year.

*Promotions:* In terms of promotions in the public sector, Aboriginal employees received 3.3% of all promotions, up from 3% a year ago.

#### *6.4.3 Main Barriers*

*Double/Triple Jeopardy:* A prominent theme throughout the consultation process was the problem of double or triple jeopardy. This situation is faced by people who belong to more than one designated group, and therefore face heightened discrimination. In particular, Aboriginal peoples with disabilities (estimated in one source to be at over 30% of the Aboriginal population<sup>21</sup>), and Aboriginal women, are among the most disadvantaged in the labour market.

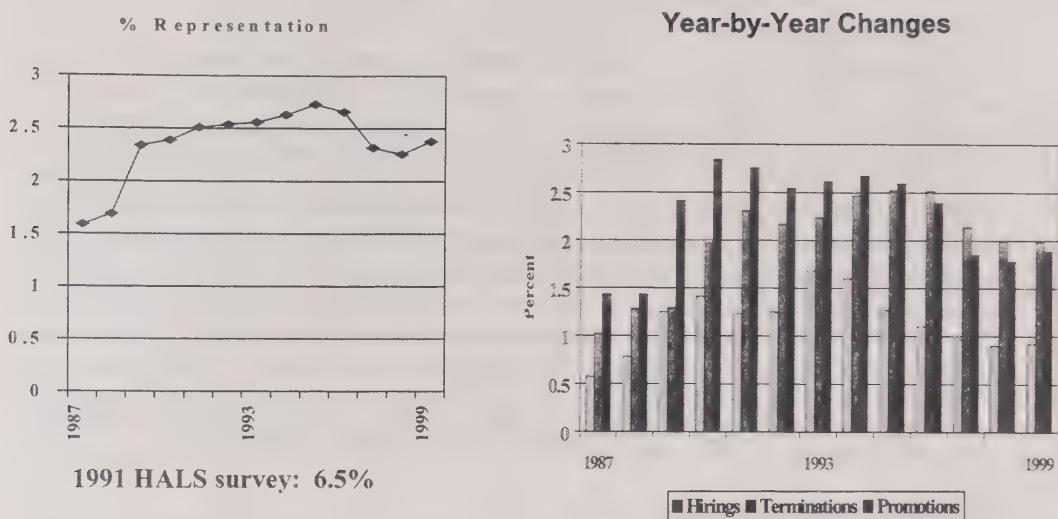
*Workplace Issues:* The turnover of Aboriginal employees is very high in both the public and private sectors, making employee recruitment and retention an important workplace issue. Reasons for this include lack of cultural acceptance among co-workers, lack of mentoring and counselling, unfriendly work environments, and lack of support systems to deal with the differences between corporate and Aboriginal cultures. It could be addressed by mentorship and cultural accommodations, as well as development of various other support systems in the workplace.

Further reasons for fluctuating levels of hirings, promotions, and terminations include the fact that many Aboriginal employees are hired into temporary, seasonal, or unstable jobs, which are not conducive to retention in the workforce, or to increasing overall employment levels.

*Youth:* Aboriginal peoples are the fastest growing demographic group in the country and have a higher proportion of children and youth than the overall Canadian population. This adds a sense of urgency to address issues that will have an impact on young Aboriginal people entering the labour market.

## 6.5 Persons with Disabilities

### 6.5.1 Federally Regulated Private Sector



**Overall Representation:** According to the 2000 of HRDC/Labour Annual Report, people with disabilities represented 2.4% of the workforce in 1999, drastically below the labour market availability of 6.5%. It is expected this imbalance will increase when new data from the 2001 Participation and Activities Limitations Survey (PALS) is available in 2003.

The first *Employment Equity Act* in 1987 appeared to have a significant impact on the total numbers of people with disabilities in the workforce, in that the percentage rose from 1.7% in 1987 to 2.3% in 1989. Since that time, however, people with disabilities have experienced little improvement in their workforce representation (currently 2.4%) and have only reached 37% of their overall potential labour market availability in 1999.

**Hires and Terminations:** People with disabilities had a 0.9% share of hirings only and a 2% share of terminations in 1999. These numbers suggest a net loss of persons with disabilities in the workforce (746 more people terminated than hired). People with disabilities and Aboriginal peoples are the only groups where a net loss has occurred over the last ten years, and according to the statistics from the 2000 Annual Report the net loss of people with disabilities (3,469 people in the last five years) appears to be significantly higher than for Aboriginal peoples.

*Promotions:* Most persons with disabilities are concentrated in clerical occupations. Even though the share of promotions received by them increased from 1.8 % to 1.9 % in 1999, it's still lower than the record level of 2.8 % observed in 1990 and it's below their representation of 2.4 %.

### 6.5.2 Public Sector

*Overall Representation:* The representation of persons with disabilities in the federal public service workforce increased marginally to 4.7%, from 4.6% as at the end of March 1999. Of the large departments, Human Resources Development Canada employs the highest proportion of employees with disabilities, at 8.5%.

*Hires and Terminations:* In 1999, just under 1 in 8 persons with disabilities was hired as an indeterminate employee, down from approximately 1 in 5 two years ago. Eight of 10 persons with disabilities entered the federal Public Service in the Administrative Support or Administrative and Foreign Service categories. Almost 50% of persons with disabilities separating from the federal Public Service are indeterminate employees, down from 2 out of 3 observed last year.

*Promotions:* Employees with disabilities received 4.1% of all promotions, up marginally from 3.9% last year, but still below their internal representation of 4.7%.

### 6.5.3 Main Barriers

*Double/triple jeopardy:* Some people with disabilities face a complex interplay of barriers. For example, women with disabilities are the least likely of all groups to have worked full-time for the full year and are most likely to have gone without work all year. Aboriginal women with disabilities are the most disadvantaged of all groups covered under the *Act*.

*Accommodation:* The private sector lags behind the public sector in the engagement of persons with disabilities. While there are costs associated with physical and work tools accommodation, the problem may be more attitudinal on the part of employers. Given the economic linkages to employment equity already presented, there are opportunity costs associated with the under-utilisation of this talent pool. The return on investment may be significant. Working age adults need work-related supports in order to earn their own living. In the 1991 Health and Activity Limitations Survey (HALS), persons with disabilities identified lack of job accommodation and flexible hours, loss of disability supports and income, and inadequate training as some of the factors that prevented them from participating in the labour market.<sup>22</sup>

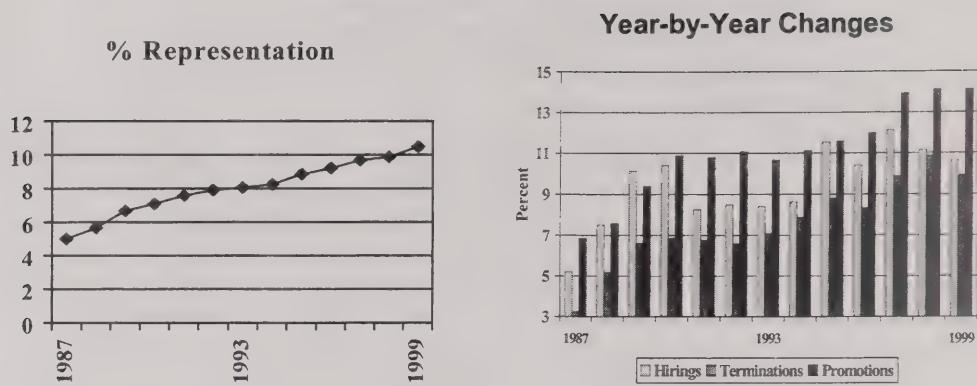
*Links with other social issues:* Key employment issues include a low level of participation in the labour market, less likelihood of having full-time, full-year employment, and high unemployment. Yet:

“Effective practices show that employers can be successful when they take a proactive approach to recruiting and maintaining persons with disabilities as part of their skilled workforce”<sup>23</sup>.

*Education:* Overall, persons with disabilities are underrepresented among those with a university degree and over-represented among those who have less than a secondary school education. For example, 36% of working-age persons with disabilities have not completed high school compared to 18.3% of persons without disabilities and 36.4% of persons with disabilities have graduated from a post-secondary institution compared to 51.4% of persons without disabilities. There is a strong link between educational attainment and labour market performance for persons with disabilities. 46.4% of persons with disabilities with a university degree were employed throughout the entire year during 1998, while only 19.6% of persons with disabilities who had not completed high school worked year-round. (Statistics Canada’s Survey of Labour and Income Dynamics, 1993-98)

## 6.6 Visible Minorities

### 6.6.1 Federally Regulated Private Sector



1996 census availability: 10.3%

**Overall Representation:** Representation of visible minorities in the workforce covered by the *Employment Equity Act* has improved since the Act has been in force. Statistics show that during this time, representation has doubled, from 5% in 1987 to 10.5% in 1999. Since, according to the 1996 census, the availability rate for visible minorities is 10.3%, they have achieved over 100% representation. It should be noted however, that the immigration rate is rising, and the availability of visible minorities in the labour market is continually increasing. It is estimated that the availability rate for visible minorities will reach 14% in the year 2001.<sup>24</sup>

**Hires and Terminations:** The progress made by the private sector in hiring members of visible minorities is undeniable. Terminations of visible minorities as a proportion of all terminations were reported as 9.9%, which is up from 1998.

**Promotions:** In the private sector, visible minorities primarily occupy scientific and professional positions, and their membership in the management group remains very low. In 1999, promotions for visible minority employees under the Act remained unchanged from the previous year at 14.1%.

### 6.6.2 Public Sector

**Overall Representation:** Persons in a visible minority group represented 5.5% of the federal public service workforce at the end of March 2000. Excluding data for the former Revenue Canada, this reflects an increase of half a percentage point from the

situation as of March 31, 1999. When Revenue Canada became Canada Customs and Revenue Agency, a separate employer, the number of persons in a visible minority group in the Public Service was reduced by almost one third.

Among the large departments, Health Canada and Citizenship and Immigration Canada employ the highest proportion of persons in a visible minority group, both at 9.5%.

*Hires and Terminations:* Of all new hires, 5.7% were persons in a visible minority group, up from 4.4% a year earlier. Of all new indeterminate hires, 8.3% were employees in a visible minority group, up from 6.9% a year earlier. Persons in a visible minority group accounted for 4.2% of separations by indeterminate employees, up from 3.7% a year ago.

*Promotions:* Employees in a visible minority group received 6.3% of all promotions, up from 6.1% a year ago, and higher than their internal representation of 5.5%.

### 6.6.3 Main Barriers

*Under-utilisation of Skills of New Immigrants:* More than 20% of the population were born outside Canada, and of these, more than 75% are members of a visible minority group.<sup>25</sup> Integration of white immigrants into Canadian society is easier than the integration of members of visible minorities, and, as a result, members of visible minority groups are the most disadvantaged in the labour market in terms of wages and occupational levels. This problem amounts to a form of racial discrimination.<sup>26</sup>

Although members of visible minorities are generally better educated than the average Canadian, they hold marginal jobs that under-utilise their capabilities, often because foreign education credentials are not recognised by Canadian institutions and organisations. Visible minorities are thus unable to make use of their qualifications, and earn up to 25% less than those of white Canadians.<sup>27</sup> Only half of new immigrants who belong to visible minority groups have been able to find work suited to their level of knowledge and qualifications. Moreover, visible minorities are rarely found in management positions. In the top 20% of the salary scale, their representation is half that of white Canadians with the same level of education.<sup>28</sup> Blacks appear to form the most disadvantaged group; with the same professional qualifications and the same work experience, white job applicants are offered three times as many jobs as Black candidates.<sup>29</sup>

*Glass Ceiling:* Some attribute the unfavourable situation of visible minorities in the labour market to cultural differences, language problems and the new immigrants' poor quality of education. This does not explain, however, why members of visible minorities born and educated in Canada, face the same dismal situation. Graduates from low-income families and visible minority families have difficulty finding full-time employment.<sup>30</sup>

Even when they do find employment, it is rare for them to obtain senior management positions. This has been attributed to long-standing practices such as the "old boys' network" and the tendency to promote "clones", that is, those who are the most like us.

Until sufficient visible minorities are in positions of authority that attitudes change and visible minority senior managers are no longer seen as token, this practice will likely continue to be perpetuated.<sup>31</sup>

Some action is being taken to correct the situation of visible minorities in the public service. The Treasury Board Secretariat has given its approval to an action plan, entitled *Embracing Change in the Federal Public Service*, proposed by the Task Force on the Participation of Visible Minorities in the Federal Public Service.<sup>32</sup> The Task Force believes a benchmark objective of one in five in external public service hirings is attainable by 2003 and one in five for management appointments by 2005.

## **6.7 Data-Related Issues**

Many issues surrounding self-identification and definition of some designated groups surfaced in consultations. However, they are also addressed in this section because they affect the data.

### *6.7.1 Aboriginal Peoples Self-identification*

The Aboriginal community is concerned people are falsely self-identifying as Aboriginal as a way to benefit from programs designed to help Aboriginal peoples gain, retain, and move up in employment. Similar concern was expressed about people self-identifying as Aboriginal despite distant ancestry and, more important, if they have no connection to their Aboriginal heritage or culture.

### *6.7.2 Visible Minorities Self-identification*

Several members of visible minorities refuse to take part in voluntary self-identification, claiming that they would not be proud to potentially obtain employment or advancement in their career based on the fact that they belong to a designated group. Consequently, the representation of members of visible minorities is sometimes understated. Some even attribute the apparent under-representation of visible minorities in the public sector to the failure of this method of collecting data. There also exists the situation in which people identify themselves in Statistics Canada surveys, but not on an employer's workforce analysis survey, leading to incorrect representation data.

### *6.7.3 Persons with Disabilities Definition*

During consultations it was suggested that the definition under the EEA be changed to correspond with the World Health Organisation (WHO) definition, which is based on employability rather than physical ability<sup>33</sup>. The two differ in part because the WHO definition requires medical certification in order to be viewed as having a disability. The EEA self-identification policy, however, does not allow the use of medical certificates. This proposed amendment could also help to clarify employees' questions or confusion surrounding the self-identification process.

A fundamental problem with the current *Act*, according to employers, centres on the issue of self-identification. An employer may spend tens of thousands of dollars accommodating an employee with a disability only to find that they did not self-identify once their disability has palliated and they are as able to do their job as any other employee. Given sections 9(2) and 18(4) of the *Act*, employers cannot count an employee as a designated group member if he or she does not self-identify.

There are limited sources of data on persons with disabilities. Data collection is underway this year for the Participation and Activity Limitation Survey (PALS) 2001, the first major survey on persons with disabilities to be undertaken since 1991 when the Health and Activity Limitation Survey (HALS) was carried out.

#### *6.7.4 Visible Minorities Definition*

Section 2 of the Act states that ““members of visible minorities’ means persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.” This definition does not make a distinction between different subgroups, which may be identified by criteria such as region of origin, region of residence, or even the time of arrival in Canada. The Royal Commission on Equality in Employment, however, had already stated in its October 1984 report that without such distinctions the real issue may not be addressed:

“To combine all non-whites together as visible minorities for the purpose of devising systems to improve their equitable participation, without making distinctions to assist those groups in particular need, may deflect attention from where the problems are greatest.”<sup>34</sup>

It can be argued that consideration of such subgroups in the definition of visible minorities may result in the creation of unwarranted ethnic or racial hierarchies. Others counter that globalisation is making some visible minorities “invisible”. Even though the Act still deals with all visible minorities as an inseparable whole, Statistics Canada and some others make a few distinctions among members of visible minorities, primarily on the basis of their origins. For this reason, it is possible to obtain statistics on such visible minorities as Chinese, Blacks, Japanese, Southeast Asians, and Filipinos.

## 7. Consultations

This chapter is entirely based on participants' statements made during the consultations.

Twenty consultation sessions were held across Canada as part of the 2001 statutory review of the *Employment Equity Act*. Almost 300 people representing various groups with interest in the *Act* were invited to express their opinions and concerns. Participants included employers, unions, designated group members and representatives, and consultants. They represented all parts of Canada. HRDC/ Labour developed a discussion paper to generate dialogue, which is included as Appendix A. Appendix B provides a complete list of participants and consultation dates.

Several themes were explored during these consultations including issues related to the four designated groups, self-identification, employer obligations and the unions, enforcement and education, the business case, the public sector, separate employers, and provincial jurisdiction and FCP. In summary, there was overwhelming support for the continued need for the *Act* from all participants. The exception was voiced by members of designated groups who criticised the program for not doing enough for them. In terms of interest and the amount devoted to the various themes, issues related to persons with disabilities, visible minorities and Aboriginal Peoples had the major share, followed by self-identification and employer obligations and union involvement. Other themes received less time and attention from participants.

While details of the feedback received through the consultations meetings are included in sections 7.1 through 7.14 below, the following bullets provide summarised highlights of comments made by participants:

- **Continued Need For The Act**

Just as the 1991 Review confirmed consensus on the need for the Act, the latest review re-iterated the need for continuation of the *Employment Equity Act*. No one suggested that the need for employment equity had diminished. There were calls for stronger enforcement and for a higher profile educational and leadership role for HRDC/Labour.

- **The Business Case**

Many made the case that Canada needs to invest in human capital to maximise the use of available skills and talent. To do otherwise negatively affects the “bottom-line”.

- **Education and Training**

A common opinion was that enhanced education and training need to be directed at all workforce positions: managers and employers alike. Often senior management buy into employment equity, but staffing officers and line management remain reluctant. Misinformation about employment equity could be addressed by vigorous public

Misinformation about employment equity could be addressed by vigorous public education initiatives. There were many calls for a leadership role for HRDC/Labour to generate co-operation with community organisations representing the designated groups, bargaining agents and employers.

- **Employer Obligations**

Two major issues cited were employer accountability and the enforcement of obligations pursuant to the Act. Some felt that line-managers may not be fully aware of employment equity commitments from the top and that accountability may be enhanced through performance reviews for hiring, retention and promotion. Some employers felt time spent on reporting and compliance audits impinged on the time available to practice employment equity. Others expressed satisfaction with HRDC/Labour support and software.

- **Unions and Employee Involvement**

Unions want to be involved in the employment equity planning process. The Canadian Labour Congress (CLC) stated it is important to be involved at the outset. For example, participation in designing self-identification surveys will enable unions to promote the importance of questionnaire completion. Designated groups' representatives stressed the importance of transparency and written policies on issues such as accommodation.

- **Women**

Overall representation approximates availability, but concentration in lower level positions persists. Accommodations to balance work & family life remain an issue.

- **Aboriginal Peoples**

Participants expressed concern with respect to a lack of mentoring to help First Nations people and other employees adjust to cultural differences as well as to a lack of a welcoming environment in the workplace. Concerns were also expressed about the perpetuation of outmoded stereotypes.

- **Persons With Disabilities**

Issues discussed included the need for employers to have mandatory written accommodation policies and to address barriers to employment through meaningful accommodation rather than token gestures. Other issues included the fear of self-identification for some persons with disabilities and the expected increase in the number of people with a disability as the population ages.

- **Visible Minorities**

In the federally regulated private sector, representation approximates availability but, as for women, concentration remains in lower level positions. Several felt that lack of recognition of foreign credentials is a contributing factor. The question of definitions

regarding subgroups came up. In response, many argued that segregating the visible minority community into groups which are more economically disadvantaged than others would impose a hierarchy of disadvantage which would be divisive in nature.

- **Other Designated Groups**

Suggestions were heard at some meetings to include other designated groups such as gays and lesbians, youth, and older workers.

- **Federal Public Service**

While the HRDC/Labour consultations process focused on the federally regulated private sector, several public sector unions and designated group representatives expressed concerns related to the public service. A TBS representative was invited to observe at all HRDC/Labour meetings with stakeholders.

- **Separate Employers**

Separate employers and their bargaining agents are frustrated at the lack of support. HRDC/Labour provides support to the federally regulated private sector and the TBS does the same for federal public service departments. No organisation is charged with providing support for the 15 separate employers employing approximately 60,000 employees in federal special operating agencies.

- **Self-Identification**

Self-identification was a major theme in most meetings. Some designated group members, particularly persons with disabilities and Aboriginal peoples for whom group membership may not be obvious are still reluctant to self-identify. Some employers expressed concern about spending money to accommodate persons who, once accommodated, no longer feel disadvantaged and so do not self-identify as such.

- **Enforcement**

Employers raised concerns about the consistency of CHRC enforcement procedures. Designated group members felt that complaints should be allowed under the Act. Union representatives felt compliance should be strengthened and saw an enhanced role for the CHRC.

- **Data Issues**

Concern was expressed about the relevance of comparison data since labour market availability for women, Aboriginal peoples and visible minorities is based on 1996 census data, while the availability data for persons with disabilities is based on the 1991 HALS. Some stressed the importance of numerical benchmarks while others wanted to focus less on numbers and more on employer accountability and qualitative issues.

- **Provincial Jurisdiction**

The view was expressed that the federal government should encourage provincial/territorial jurisdictions to enact employment equity legislation. Participants in Montreal felt that given their unique immigration policies, groups are not discriminated against in the same way and that for visible minorities, a definition should be derived through subgroup consultations.

- **Federal Contractors**

Some want to see the same employment equity rules and regulations in the federally regulated private sector applied to employers and employees that come under the Federal Contractors program. Others argued that provinces and municipalities receiving federal transfer payments should comply, as should employers who get grants and contributions from HRDC.

**NOTE: The following sections contain an expanded version of the brief notes above. As well, Appendix D contains quotes, by permission, of several of the participants at the consultation meetings.**

## **7.1 Continued Need for the Act**

Most participants provided feedback on the usefulness and relevance of the *Act* and supported its continuation.

A submission from the Canadian Banker's Association summed up the overwhelming support the *Act* received as a positive instrument of the government of Canada's social policy:

"{PRIVATE }The CBA continues to believe that, as a policy instrument designed to promote fundamental long-term change, the *Employment Equity Act* (EEA) in its present form remains an effective, appropriately focused and balanced law and is an important component, although not the only one, of the efforts that will help Canada achieve an inclusive society, a goal established by the government in the February 2001 Throne Speech."

Although the *Act* applies to only to the workforce in federally-regulated jurisdictions and the federal public service it was noted that the *Act* is also having a wider positive impact.

Some employers with no legal obligation to comply with *Act*, practice employment equity nonetheless because they believe it is good for business, according to one consultant. "I think this speaks volumes on the need for the *Act* and its usefulness," said the consultant.

Despite the overwhelming support for the *Act*, the consultations also revealed a desire for improvements to its scope and the way it is being implemented.

Designated groups and labour were concerned that government downsizing has hurt employment equity and led to a lack of co-ordination. Efforts by the CHRC and HRDC fell short of the mark, they said, with the result that many of the issues that existed prior to the *Act* in 1986 have persisted, including concentration and discrimination in pay; and little impact on the 1.4 million people who have immigrated to Canada in the last six or seven years.

Others wanted more enforcement in the *Act* with some arguing for a quota system similar to U.S. employment equity legislation.

Still others noted that some employers have not bought in yet and are still fighting the *Act*. "They view it as an infringement on their management rights to hire and fire. They think it is an unnecessary burden," said one participant.

Concern was also expressed about the need for better public relations and public education," to drive home the EE message.

"Workplace education is essential in breaking down misperceptions and prejudice," said Johann Tann of the Public Service Alliance of Canada.

"Attitudes do not change by chance. Getting people to understand the full implications of EE and the diversity in the Canadian population will take a sound public education program."

## 7.2 The Business Case

A major theme in the discussions was that employment equity is good for business and the bottom line. The federal government was urged to send a strong message to employers about the benefits of adopting fair and equitable workplace practices.

Participants cautioned about the negative effects of discrimination on the Canadian economy and the psychological costs suffered by individuals who are prevented from gaining opportunities. Rising retirements in an ageing population will mean employers can't afford to ignore qualified employees in the designated groups.

It was also noted that without employment equity social costs would be much higher.

"Health care costs, for example, would be greater if members of designated groups were not supported this way," said Robyn Mackie of the Calgary Association of the Deaf.

"People who aren't employed usually suffer more depression and illness, require social assistance and claim unemployment insurance. These things would cost society even more than whatever EE programs cost."

Some employers believe employment equity imposes a cost burden and said they were unable to see the benefits, at least in the short term. One participant strongly disagreed:

"This is not affirmative action; it is about hiring the best person for the job minus the discrimination associated with personal characteristics. This does not cost employers a dime."

Still others said employers couldn't be blamed if they understand only business and care little about doing the right thing unless it is tied to profitability.

"Employers sometimes think doing the right thing is not good for them. Businesses are there to make money, not to do social good. They can practice discrimination and still make money",

one participant said. They should learn, however, that removing barriers to the employment will yield the best candidates which in turn is good for the bottom line.

Some participants linked employment equity to Canada's position in the global market-place, stating that investment in human capital is the key to maximising the skills and talents in the country.

### **7.3 Education and Training**

One of the stronger messages to come out of the consultations was the need for more education. Specifically, the government was urged to: (1) help employers better educate their managers and workforces, (2) educate employers about the need for employment equity and how to go about achieving it, (3) inform the general public and dispel the many myths about the purpose of employment equity.

In particular, the Labour Program was called upon to take an active role in educating the public about the meaning, goals, and benefits of employment equity.

Participants called on HRDC to hold regular meetings of community organisations representing the designated groups, bargaining agents and employers to discuss issues of common interest, identify difficulties and offer solutions. The complaint was heard that the only time issues are brought up is when there is a review of the *Act*.

One of the challenges in getting the EE message out to the workplace is attracting employees to meetings. One contractor who volunteered to do a presentation at a workplace was very disappointed that in a firm of 450 employees, only 20 people showed-up for the event. There was a lack of commitment to organising this event by the company.

A common view was that changing corporate culture is needed to make more room for diversity. Rigid structures in many companies are counter-productive to achieving employment equity. Employment equity is not just about hiring and accommodation but also about creating a welcoming workplace environment where people are comfortable about who they are and where they are from.

#### **7.4 Employer Obligations**

Two major issues arising from the consultations were employer accountability and enforcement of obligations. Suggestions included adding specific provisions to hold employers accountable for their EE activities and adoption by employers of a staffing process for designated groups. This would accelerate the achievement of a representative workforce, where hiring would be transparent.

Employers called for more materials and guidance from the CHRC and the HRDC. Decreasing program support since 1995 and reduced funding have become barriers for the advancement of employment equity. Employers said they needed “actionables” rather than encouragement to think of innovative ways to implement the *Act*.

It was also suggested that employment equity considerations should be included in the job descriptions and performance evaluations of managers. One participant noted:

“Front-line managers are not aware of the requirements of the *Act*, and top managers who know better only give lip-service commitment to employment equity, but this does not translate into action the workplace.”

Managers could be held accountable through performance reviews for hiring, retention and promotion. Managers should also have greater contact with their employees, and understand the value of going outside their immediate circles to find new employees.

Participants were dissatisfied with accommodation, pointing out the lack of provisions to hold managers accountable for the implementation of special measures and positive policies and practices in employment equity plans. If managers are not accountable for results, plans are too often lost or discarded. Key activities are getting senior management to approve strategic positioning in terms of employment equity and to approve training and technical support.

Some employers complained there aren't enough candidates from the designated groups to meet their needs. Partnering with the community could help, but this is also a challenge. They said HRDC should provide more support to employers who partner. Some also noted it is frustrating to hire and train designated groups who then move on when other companies "steal" them away.

Other participants said that employers often manipulate their own employment systems so that their sons and daughters get hired and are not prepared to share the hiring power. Concerned was also raised about employers who staff mostly term and temporary jobs to meet the obligations. This practice would be curbed if obligations were changed to include only permanent jobs for reporting purposes. One employer disagreed and said that his company hires and monitors temporary employees to move the better candidates into permanent positions.

#### *7.4.1 Employer's Obligations: The Reporting Obligation*

A main concern for many employers was the amount of time spent on reporting. Participants representing employer associations stated that as much as 80% of the time they spent on employment equity was devoted to completing reporting requirements. Many believed reducing these requirements would lead to greater progress in employment equity.

On the other hand, employers in banking and other sectors did not see reporting as a major issue given that HRDC/Labour provides the software allowing them to download reports from their human resource databases and generate the report. Several options were discussed on how to lessen the reporting burden for employers.

Still, the message from all employers at the consultations was that too much time and expense were spent on enforcement (audits and reports) leaving little time to develop or implement employment equity action plans. In her submission, Sharon Caddigan of the Calgary Airport Authority, elaborated on this view:

"The task to prepare the EE audit is huge and quite onerous (\$50,000 is a lot of money for a small organisation), and the preparation of the annual reports is quite time consuming. Personally, I would rather focus on our employment systems to try to correct any problems. In a small organisation, it is hard to convince higher management to allocate resources to this process. The Act is such that the reporting requirements are quite clear, but the obligation to look at employment systems that flows from the equity plans that we prepare are not monitored or widely encouraged".

Employers said that they need more help with designing the employment equity plans and changing their employment systems. One claimed annual reports were unnecessary and suggested biannual reporting. Another employer complained his company is making reasonable effort and progress but is judged only according to numbers generated by HRDC and CHRC.

Adding to the diversity of opinion, other participants said reporting is a necessary part of accountability. Union representatives believed there should be stricter requirements for reporting with more detailed reports including more information on women with disabilities or visible minority women in the workplace. It was also noted that reporting obligations are necessary to keep employers on track and should remain a fundamental aspect of the *Act*.

## 7.5 Unions and Employee Involvement

Unions want to be involved with employers in the employment equity planning process. The *Act* states that employees' representatives shall be consulted, but unions say this does not always happen. Union representatives maintained the *Act* should be strengthened to make collaboration obligatory and enforceable. Moreover, the review should define what measures employers must take when consulting with a union. The Canadian Labour Congress, among others, emphasised that unions want to be made aware and have their input considered when employers make employment equity decisions. Unions also want to be involved during the implementation stage and maintain it is essential to include their participation in designing self-identification surveys.

Another suggestion called for unions to be involved in employment equity through their collective bargaining activity.

As the following submission of the Fédération des travailleurs et des travailleuses du Québec shows, unions feel strongly that employment equity can't be left solely in the hands of employers.

"It is imperative that employment equity programs be negotiated. Unions, where they are present, must be involved in every step of the process. ... In practice, the participation of employees and unions is useful to employers in terms of avoiding possible resistance. It also allows a collective assessment of what may be most appropriate in a particular workplace, by those who know the situation best. ... The Act and Regulations must be made clear, for experience teaches us that, where an employer wishes to avoid us, only the law will force him to involve us."

One employer welcomed greater union involvement but argued that union-management collaboration does not work in employment equity. Another participant said annual consultations between unions and employers are an opportunity for management to share the results of the reporting process.

Other participating employers said they were receptive to working with unions on employment equity, but complained that when they wanted to hire women to increase representation, the unions were opposed. Examples were provided of unions that did not include employment equity issues on their agendas, and of union representatives who were not supportive regarding job actions to benefit members of designated groups.

Representatives from designated groups expressed frustration at the lack of clarity about the role of unions and poor community involvement. Stakeholders should know that employee representatives are not the same as union representatives, they said. The *Act* should be flexible on collaboration since unions cannot claim they represent all employees on employment equity. They noted the difficulty in defining a role for unions that go beyond normal collective bargaining agreements. If unions are given a role in employment equity they should also share the responsibility for the outcome of the negotiations. Further, they should help people in designated groups and not just union members.

One participant, who had been screened out of a job because she was not a union member, complained that unions can act as a barrier to employment equity. Her view was countered by another participant who said that unions are in a tough spot. They should defend collective agreements, such as seniority clauses, when they are called upon to promote employment equity.

Another participant raised the issue of employees who retire with a pension and come back as contract workers and take work away from potential employees from the designated groups. Seen in this light, hiring campaigns are an opportunity for unions to compel employers to consider employment equity issues.

In response, union representatives said it has been difficult to make employment equity a top priority. They say they need better information to change policies. Moreover, when employers are contracting out and side stepping unions, job security and seniority are important issues and cannot be ignored.

## 7.6 Women

It is clear from narrative accounts given at the consultations, as well as from employer reports, that specific barriers still exist for women in the labour market under the *Act*, inhibiting them from achieving their full potential.

Although the overall representation of women in the workforce under the *Act* almost matches their availability, participants were concerned that women continue to face systemic discrimination in the workplace. Many are mired in low-paying jobs or traditional occupations. Accommodations to balance work and family life are often inadequate.

Another issue which received attention is the difficulty of attracting women to the trades. One employer in British Columbia reported there were 31 women in long-shoring jobs in 1991, but only 19 in 2001. The employer is modifying requirements to attract women candidates and is having some success, but women are hard to recruit and retain in this setting.

Double jeopardy is also a problem, particularly for visible minority women. "It is one thing to be a woman and face discrimination, but it is more difficult if you are a visible minority woman. "The *Employment Equity Act* needs to address the need to compare relative advancements that women have made to those of minority women," said Nina Karachi-Khaled of the Canadian Council of Muslim Women. "Women of colour and immigrant women continue to lag behind other women in the workforce."

## 7.7 Aboriginal Peoples

Aboriginal peoples have had mixed experience with employment equity. While their numbers are adequate in the federal public service, they suffer from high departure rates. They are also below market availability in the private sector. In both sectors, there is a lack of managerial positions available for Aboriginal peoples. Many Aboriginal persons have academic qualifications but no experience relegating them to entry-level jobs.

Two areas of concern were identified for Aboriginal Peoples: (1) lack of mentoring in the workplace to help Aboriginal employees adjust to corporate cultures; and (2) lack of a welcoming environment in the workplace. Stereotypes and unfriendly work environments have led to low retention and promotion rates of Aboriginal Peoples in the workforce. Suggestions for addressing this problem included cultural awareness programs aimed at the non-Aboriginal members of the workforce and a cultural audit which would require the development of objective criteria to measure employers' EE efforts.

Some employers supported hiring Aboriginal Peoples but said they had to compete with others for the same individuals. "Some candidates play one employer against the other to get higher salaries and want to be paid more than the company can afford," said one employer.

"The bidding wars have often resulted in a candidate refusing the job after negotiating the salary and the managers get frustrated because they are told to take this candidate for the company to reach its employment equity goals."

Other employers said they encountered cultural difficulties when they hired Aboriginal persons. "Aboriginal employees needed to take Friday afternoons and Monday mornings off for cultural reasons", said some employers adding that, "Aboriginal employees do not stay in jobs and have absenteeism problems due to cultural differences or drug and

alcohol problems.” Another employer said, “Aboriginal employees fail to show up for work and they can go down to the band office and get welfare for the week instead of coming to work.”

Other participants countered that such statements show ignorance of Aboriginal culture and social background and perpetuate stereotypes. If an Aboriginal employee has a problem and wants to go on a rehabilitation program, or has a cultural need that requires his attention, he might get fired because the employer does not recognise the program or the culture. One participant pointed out that banks make an effort to attract and promote Aboriginal peoples, but fail to accommodate the needs of Aboriginal employees. An Aboriginal woman disagreed, pointing out how the *Act* had been instrumental in her getting a job at a bank and how both her cultural and career needs had been met in a positive work environment.

Some Aboriginal Peoples fear losing employment if they self-identify. “On the reserve, parents say to their children: do not tell them you’re Indian, you’ll lose your job,” said one participant. Other people abuse the employment equity program by identifying as Aboriginal persons when they only have distant ancestors. White spouses of registered Indians, or white persons with a remote grandparent choose to self identify to gain perceived advantages. One Aboriginal public servant said that she had a boss who discriminated against her for five years but was able to resolve the situation after learning about employment equity through her union.

## 7.8 Persons with Disabilities

Persons with disabilities have experienced the least progress under the *Act* with very small advances in representation, recruitment, and promotion between 1995 and 2000. Major issues which surfaced during the consultations included the definition and accommodation of persons with disabilities.

Participants suggested that written accommodation policies be mandatory under the *Act*, and that employers be held accountable for their written commitments. Accommodation of workers with needs should be seen as the norm and not as a favour from the employer.

Some, including the CLC, stressed the importance of accommodating persons with disabilities by meeting their individualised needs. The *Employment Equity Act* only requires employers to make reasonable accommodation to the point of undue hardship, not simply to do what appears to be “reasonable” or “practicable”. The 1998 amendments to the *Canadian Human Rights Act* specified that accommodation must be to the point of undue hardship “considering health, safety and cost” (Section 15(2)). The Supreme Court of Canada has adopted a similar standard in two recent decisions, *Meiorin* and *Grismer*<sup>35</sup>.

Employers were seen as unaware of the financial support available for various accommodation programs, such as for communications and hearing aids. Nor have employers kept up with the pace of change in terms of accommodation, said others, citing workplace web sites not accessible to some persons with disabilities.

Suggestions for improving accommodation included training, accountability, and development of guidelines. Assigning people to psychologists through the CAP program to assess the needed accommodation was seen as condescending and fundamentally wrong. Another participant said systemic barriers face persons with disabilities as employers screen them out at the beginning of a recruitment process.

Second, some have argued that the Act should require all employers to have an accommodation policy, and should specify the key elements which must be contained within that policy. A policy is an essential first step for ensuring that managers understand the needs of their employees and will assist their integration into the workplace. A written policy would also communicate to employees their employer's willingness to provide them with assistance and support.

Banks have made significant efforts in accommodation, but have difficulty reaching the benchmark numbers for persons with disabilities. Many factors contribute to this situation such as socio-economic and cultural issues, and transportation problems. People do not know, for example, that getting to and from home and work is an issue for persons with disabilities.

Discussions also revolved around the definition of a person with a disability. Under the current Act people are seen as disabled if they consider themselves to be disadvantaged in employment or believe that an employer is likely to consider them to be disadvantaged. Some people argued this should be changed to be more in line with the definition of the World Health Organisation (WHO) which states that people with medically certified or perceived impairments are disabled by society's failure to accommodate their needs. Others disagreed, saying the Act's definition is more suitable for Canada's needs, as the WHO definition appeals more to countries where the support for disabled persons is much worse.

Many participants rejected expanding the definition of people with disabilities while others wanted more attention paid to types of disabilities, the ageing workforce and repetitive stress injuries.

The issue of self-identity also received a great deal of attention during the consultations. Evidence persists that some persons with disabilities do not self-identify in the employer's surveys. "If you self-identify as a person with disabilities, you seriously limit your opportunities for advancement, or worse, you could be out on the street," said one participant. This view was echoed by another person with a disability who said, "I am lucky to be here because I am a number. But I am expected to work ten times harder than

any ordinary employee because I am not productive due to my disability." Yet another talked about the "Glass Staircase" facing employees with disabilities. "I can look in, but I can't even get in the door. But if I get in, I cannot climb."

Some suggested that self-identification should occur at the time of hiring to establish whether a person was disabled at the time of hiring, or sometime after they were on the job. Injured workers or persons whose limitations are accommodated do not know that they should, or could self identify.

Representatives of persons with disabilities said some employers consider persons with disabilities unfit for the workplace, ignore training for this group, and direct them to certain jobs, which are often low paying. Other participants said many employers hire persons with disabilities on short-term contracts just before the end of the reporting period.

It was suggested that the concept of *Undue Hardship* in the *Act* should be redefined and discussed. The government should require service providers to make service such as transportation accessible to people with disabilities.

Other recommendations included more links between social organisations and employers to ensure persons with disabilities have the opportunity to stay in their jobs and have their needs met more effectively. Persons with disabilities want to feel useful in the workplace and be able to find work without having to worry about employers getting government grants to hire them.

## 7.9 Visible Minorities

Visible minority groups expressed concern about hiring and promotion statistics in both the public and private sectors. In the private sector where overall figures are positive, visible minorities are subject to discriminatory hiring practices and once hired, they face a glass ceiling where they become stuck in the same position with little or no chance for promotion. As a result, visible minorities are poorly represented in the management category.

In the federal public service visible minorities have seen the least progress among the four designated groups. In the consultations representatives from these groups called for an increase in these low representation figures to match market availability and a similar boost in representation at the executive level. One participant said change will occur when designated group members are employed not as mailroom clerks but as CEO's or Deputy Ministers.

Exclusion of many qualified immigrants (visible minorities and/or women) from the federal public service employment because they lack Canadian citizenship was also discussed in consultations. Despite a high education level and relevant experience,

newcomers from Africa, for instance, have considerable difficulty finding suitable employment. It was also noted immigrants in the private sector are concentrated in low paying jobs, such as cleaners because their credentials are not recognised.

Participants claimed acceptance of credentials increases or declines according to skin colour and called on the federal government to take leadership on this issue.

"We need a program to evaluate credentials and assist immigrants as they enter the country," said one participant. Another claimed professional associations control access to the professions in sometimes-questionable ways and are often an obstacle to the integration of persons from the designated groups.

It was noted most immigrants, even the most highly qualified, must return to school or university for several years to be considered for jobs they are already qualified to do. One suggestion called for foreign equivalency tests in engineering, medicine, and other professions.

Consultations also revealed a desire to revise the definition of "visible minorities" because rapidly changing demographics of major cities such as Toronto will soon lead to "visible majorities." Some believed the definition should focus on the most disadvantaged visible minorities who, because of their colour and or place of residence, face the greatest barriers. "The closer to white you are, the better chance for advancement you have," said one participant. Members of the black community in Halifax maintained that the federal government should hire more qualified blacks to set an example.

"Even within the unions there is racism against blacks," said one participant. "What organisation will defend black people? Blacks have experienced more barriers in the workforce than other visible minority groups, and therefore their situation should be made a priority. Black Canadians have seen their people get jobs, only to be blocked from any advancement."

But others disagreed with altering the definition of visible minorities by removing specific groups. "We cannot segregate among the visible minorities by refining the definition, which would work to the disadvantage of many of the most visible of the minority groups. It must be done in a way that will not result in *a divide and conquer* situation."

Participants discussed "the misleading impression that visible minorities are OK," and raised five issues about the current data on visible minorities:

- The 10.3% labour availability rate for visible minorities is based on the 1996 census. The 2001 census could show an availability rate of 15%. Representation has therefore not been achieved in 2001 since it is still at 10.5%.

- The 10.5% figure covers only the federally regulated private sector which represents a small number of people. It does not include the federal public service where visible minority employees make up only 5% of the workforce.
- Statistics do not take into account variations in wages, jobs and social status within subgroups of visible minorities.
- When the figures are looked at in more detail, visible minorities are not adequately represented in the 14 occupational groups.
- There is a lack of data with respect to visible minorities employed by separate employers or federal contractors.

## **7.10 Possible New Designated Groups**

The four designated groups were established in 1984 following the review of evidence of historic and chronic under-representation in the workplace and a dearth of opportunities encountered by women, Aboriginal Peoples, visible minorities, and persons with disabilities. At some of the consultation meetings it was suggested the original four designated groups could be expanded to include others such as gays, lesbians, youth, and older workers.

## **7.11 The Federal Public Service**

A wide variety of views were expressed about employment equity and the federal public service. Many felt gains for some designated groups under the *Act* were achieved in the private sector but not in the public service. “So employment equity is not working in the very house of the custodian of the legislation,” said one participant. Some said public service managers do not want to implement employment equity and they should be held accountable in their performance appraisals. Others said government as an employer is not good at promoting people from within. It tends to peg people in a classification and then forget about them. One union member said many visible minority candidates are automatically screened out from the hiring process.

The Employment Equity Positive Measures Program (Treasury Board) was seen as having little impact since it funds small pockets of programs in individual departments which don't develop into national programs. Participants also claimed federal advisory committees in the Treasury Board propose improvements and make recommendations and then fail to follow up.

Suggestions to improve employment equity in the public service included allocating more resources to support the *Act*, career development opportunities such as secondments and acting appointments to assist visible minority employees in obtaining promotions, linking training and mentoring initiatives across government departments to employment equity

and anticipatory staffing with people from designated groups to help fill vacancies created by the large numbers of retirements in the near future.

## 7.12 Separate Employers

Separate employers are special operating agencies or corporations listed at Schedule I Part II of the *Public Service Staff Relations Act*. They are public sector employers outside the traditional public service and are subject to the *Act* if they employ 100 employees or more. The number of the employers has increased from just over six in 1996 to about 30 today, including 15 with 100 or more employees. These employers engage approximately 60,000 individuals and include the Canada Customs and Revenue Agency, the Canadian Food Inspection Agency, the Office of the Auditor-General, and the National Film Board.

Separate employers and their bargaining agents voiced frustrations with the lack of support and advice available to them, saying that neither the TBS nor the Minister of Labour seemed to be responsible for assisting them.

As part of its responsibility under the *Employment Equity Act*, the Labour Program of HRDC provides support to federally regulated employers in the private sector. The Treasury Board Secretariat provides similar support to federal public service departments. But no organisation is charged with providing support to separate employers. Faced with audits by the Canadian Human Rights Commission, separate employers have recently turned to from HRDC/Labour for help. Labour had the desire and expertise to provide assistance but lacked resources. As an interim solution the TBS committed \$200,000 for one year to develop a program to provide support for separate employers.

The final report of the Advisory Committee on Labour Management Relations in the Federal Public Service, released June 2001, reviewed the situation of separate employers in relation to the federal public service. Recognising this group would continue to grow the Committee recommended separate employers should enjoy independence from Treasury Board to allow for flexible labour practices while retaining some consistency with core public service values.

## 7.13 Self Identification

Self-identification was a major theme in most consultations. Employers are required to report on the designated groups in their workforces through a voluntary employee survey. Employers can obtain gender information from personnel or pay files but voluntary self-identification is necessary to collect representation data.

Many Aboriginal peoples do not self-identify because they do not feel comfortable with the corporate culture. They also complain that some people self-identify as Aboriginal persons despite a slight ancestral connection and Aboriginal cultural values in order to seek a fast track for promotions. In the case of persons with disabilities, some individuals do not want to self-identify once the employer has accommodated them, believing it will hurt their career opportunities.

do not want to self-identify once the employer has accommodated them, believing it will hurt their career opportunities.

The *Act* forbids identification by employers. Several employers, however, advocated compulsory self-identification or even identification-by-employer. They said some employees belonging to designated groups choose not to identify, thereby skewing representation data and under-cutting their efforts. They pointed to the fact that individuals are more comfortable in identifying themselves as members of the designated groups in anonymous surveys, but not in employer forms that request the name of the person. Sometimes employees who have been accommodated by an employer will still not identify.

It was noted that questions on self-identification surveys are complicated and convoluted, because they must reflect the terminology used in the *Regulations*. One employer cited the example of employees who were not prepared to self-identify even though the form emphasised four times that the data was confidential and available to just two people.

Suggestions to increase the number of individuals in designated groups self-identifying included changing the definition of persons with disabilities and improving employers' employment equity plans. Some employees, however, fear discrimination by an employer or stereotyping by peers if they self-identify.

## **7.14 Enforcement**

Participants said complaints should be allowed under the *Act*. Many felt the threat of litigation would encourage employer compliance but others warned it would only encourage lengthy and costly litigation the *Act* was designed to avoid.

Another suggestion was to remove distinctions between the *Canadian Human Rights Act* and the *Employment Equity Act* while broadening the CHRC powers. A counter view, however, maintained employers would balk at such changes.

Many employers admitted to having a "hard time with the role of the CHRC" and the lengthy audit process. Some believed CHRC officers did not know what they wanted and would change criteria halfway through the process. Other questioned the effectiveness of the audits in promoting employment equity. Consistency of enforcement by the CHRC was also seen as a problem and there were suggestions CHRC and HRDC should move away from the idea that employment equity is an exact science.

Others defended the role of the CHRC, however, and the need for more effective enforcement. "We have not witnessed any teeth used in employment equity for 20 years, and if you should nail a few employers with complaints to make better headway, so be it!" Many employers felt enforcement by the CHRC useful because it helps keep employers honest and backed the audit as a way to show employers how to implement employment equity properly.

Union participants also called for a strong *Act* and strict compliance. They believed the CHRC is not doing enough, and lacks the necessary tools and resources, especially when it comes to enforcing accountability.

### **7.15 Data Issues**

Concern was expressed about availability numbers and demographic changes as well as the coming exodus of baby boomers from the workforce. Dramatic demographic changes have occurred in Canada and statistics on availability are out of date. There is a great need to change the *Act* to focus less on numbers and more on employer accountability for progress. Some participants said workforce analysis was inaccurate partly because some employers get employees to lie about their status to boost their numbers just prior to when a report is due. Current statistics also fail to accurately reflect the situation of visible minority women with disabilities or the issue of double and triple jeopardy.

Other participants, however, said that HRDC availability data is very reliable and is derived from highly-regarded Statistics Canada Census information.

### **7.16 Provincial Jurisdiction**

Some participants suggested expanding the *Act* to employers under provincial jurisdiction and making it mandatory while others urged the federal government to encourage the provinces to subscribe to employment equity. At the Vancouver meetings one participant asked if there was a way for the federal government to force the hand of the provinces, municipalities and school boards on issues regarding employment equity.

In other meetings the federal *Act* was held up as a good model in getting the City of Winnipeg to consider employment equity.

Quebec participants said that national statistics do not reflect the reality in Quebec. Half a million people in Quebec belong to visible minorities. The history of immigration is not the same in Quebec as in other parts of Canada making some problems specific to that province.

### **7.17 Federal Contractors Program**

Some participants mentioned the Federal Contractors Program. They want to see the employment equity rules and regulations in the federally-regulated sectors applied equally to employers and employees working under the Federal Contractors Program. They would like to see reporting done to get specific information for collective bargaining purposes. The view was also expressed that the FCP program should be extended to organisations under provincial jurisdiction currently receiving grants and contributions from the federal

government. Employers receiving grants and contributions from HRDC should also comply. Similar to the FCP, any province or municipality receiving transfer payments from the federal government should comply with the *Act*.

The FCP has promoted progress outside the federal jurisdiction. The FCP imposes the obligation for companies to put in place employment equity plans.

**NOTE: Both the Federal Contractors Program and the Legislated Employment Equity Program were subject to an independent evaluation. Once these evaluation reports are available, they will be provided to the Committee.**

## **8. Postscript**

This report was prepared to assist the Committee of the House of Commons charged with reviewing the *Employment Equity Act*. The Minister is looking forward to receiving the advice of the Committee.

Employment equity has been presented within an historical context and the steps, which led to the 1996 *Act*, were traced. It was noted that the first *Employment Equity Act* in 1986 was based on the concept of fairness - the right thing to do. Education, rather than compliance, was the over-riding operative. The 1996 *Act* was expanded to include the federal public service and to provide a compliance role for the Canadian Human Rights Commission.

Following the identification of the key players under the *Act*, employment equity is examined in an economic and social context. Studies referred to show a dramatic cost to Canadian GDP in terms of lost productivity due to the under-utilisation of designated group members. This bottom line cost demonstrates employment equity is not only the right thing to do but is also the "bright" thing to do from a dollars and cents perspective.

Data are provided showing the progress of designated groups since the first reporting year under the 1986 *Act* through the 1999 reporting year under the 1996 *Act*.

Through to the end of Chapter 7 materials presented are based on research, experience with the *Act*, and data collected. Chapter 8 attempts to synthesise the comments presented during cross-country consultation meetings with employers, unions, designated group members, and other parties interested in employment equity issues.

This report was prepared by HRDC/Labour. Its officials look forward to assisting the committee with any requests for information, which may be forthcoming.

### **Correction :**

Reference to Chapter 7 should read  
Chapter 6 and reference to Chapter 8  
should read Chapter 7

## **9. Appendices**

- A. Discussion paper
- B. List of participating stakeholders
- C. Fact sheet on members of designated groups
- D. Views of some witnesses
- E. Annotated act
- F. Data highlights
- G. Employment equity in Canada: Women and minority groups in the Canadian labour market
- H. The workplace of the future
  - I.a) List of separate employers
  - I.b) Legislated Employment Equity Program Employers
  - I.c) Public Service Staff Relations Act - Schedule 1.

**Please note: The appendices follow the endnotes.**

## 10. ENDNOTES

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<sup>1</sup> *Lovelace v. Ontario*, [2000] 1 S.C.R. 950

<sup>2</sup> Report of the Royal Commission on Equality in Employment. "Equality in Employment". Silbermann Abella, J. Rosalie, Commissioner. Minister of Supply and Services Canada, 1984, pg.6

<sup>3</sup> Two international comparison studies on employment equity were made by Labour Program of HRDC in March and Fall 2001.

<sup>4</sup> Commission data as of October 20<sup>th</sup>, 2001

<sup>5</sup> Fortin,Pierre, Andrew Sharpe, and France St-Hilaire. "Reducing the wage gap isn't just moral – it's economically efficient". *Globe and Mail*. January 30, 2001.

<sup>6</sup> Ibid.

<sup>7</sup> Capitalising on Diversity, Davos World Economic Forum, Feb 2, 2001

<sup>8</sup> Annual Congress of the Association des économistes Québécois et Québécoise. May 2000.

<sup>9</sup> Statistics Canada, The Daily, June 2000.

<sup>10</sup> Reitz, Jeffrey G. "Immigrant Skill Utilization in the Canadian Labour Market: Implications of Human Capital Research". Weatherhead Centre for International Affairs, and Department of Sociology. Harvard University, January 2001. To be published in: *Journal of International Migration and Integration*

<sup>11</sup> Harvey, Edward B. and John H. Blakely. "The Costs of Discrimination: Women, Visible Minorities and the Canadian Economy". An Executive Summary prepared for HRDC. May 2001, Pg. 2

<sup>12</sup> Narrative reports of banks in HRDC's database.

<sup>13</sup> Many employers have indicated in their qualitative measures that the whole company benefits from improvements related to employment equity. See Labour Annual Report on the *Employment Equity Act* 2000.

<sup>14</sup> Cotton, Cathy . "Recent Developments in Low Income Cutoffs". Income Statistics Division at Statistics Canada. July 2001.

<sup>15</sup> Statistics Canada. "Income in Canada". 1999.

<sup>16</sup> Statistics Canada. "Health and Activity Limitation Survey". 1991.

<sup>17</sup> *Lavoie v. Canada*, appeal heard June 12, 2001 (File No. 27427), on appeal from the Federal Court of Canada which held that the provisions did not contravene the *Charter* (1999), 174 D.L.R. (4th) 588 (F.C.A.).

<sup>18</sup> Federal/Provincial/Territorial Ministers Responsible for the Status of Women. "Women's Economic Independence and Security". March 2001, p.12.

<sup>19</sup> Federal/Provincial/Territorial Ministers Responsible for the Status of Women. "Women's Economic Independence and Security ". March 2001, p.11-12.

<sup>20</sup> "Work, Family and Community: Key Issues and Directions for Future Research - 4.0 The Interaction of Work, Family and Community: Key Issues." <http://labour.hrdc-drhc.gc.ca/doc/wlb-ctp/CCSD-CCDS/c40-en.html>. Accessed June 13, 2001.

<sup>21</sup> Durst, Douglas and Mary Bluehardt. "Urban Aboriginal Persons with Disabilities: Triple Jeopardy" Social Policy Research Unit, University of Regina, February 2001.

<sup>22</sup> HRDC: "In unison 2000: Persons with Disabilities in Canada", 2000

<sup>23</sup> HRDC: "In Unison 2000: Persons with Disabilities in Canada", 2000, P. xi

<sup>24</sup> Statistics Canada. "Forecast of Visible Minorities Population". 1996

<sup>25</sup> Citizenship and Immigration Estimates. 1998.

<sup>26</sup> Feng Hou and Balakrishnan. "The Integration of Visible Minorities in Contemporary Canadian Society". Canadian Journal of Sociology. Summer 1996.

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- <sup>27</sup> Morgan Campbell. "Study Links Racism, Wage Gap". *The Toronto Star*. May 4, 2001.
- <sup>28</sup> Lock Kunz, Jean, Anne Milan, and Sylvain Schetagne. "Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income". Toronto: Copyright, 2000.
- <sup>29</sup> Pierre Joseph, Ulysse. "Justice sociale, exclusion et citoyenneté : Les minorités ethniques au Canada" [Social justice, exclusion and citizenship: Ethnic minorities in Canada]. <http://canada.metropolis.net/events>. June 2, 2001.
- <sup>30</sup> Jennifer Lewington. "Visible Minorities Land Fewer Jobs, Study Says". *Globe and Mail*. March 3, 1997.
- <sup>31</sup> Weiner, Nan. "Systemic Barriers in Staffing and Staff Development Systems within Health Canada in the case of National Capital Alliance on Race Relations v. Her Majesty the Queen". A report prepared for CHRC. January 1996.
- <sup>32</sup> Task Force on the Participation of Visible Minorities in Federal Public Service. "Embracing Change in the Federal Public Service". Lewis Perinbam, Chairperson. March 2000.
- <sup>33</sup> World Health Organization. "ICIDH-Final Draft". 2000, pg. 1-5
- <sup>34</sup> Report of the Royal Commission on Equality in Employment. "Equality in Employment". Silbermann Abella, J. Rosalie, Commissioner. Minister of Supply and Services Canada, 1984, p. 46.
- <sup>35</sup> British Columbia (Public Service Employee Relations Commission) v. BCGSEU), [1999] 3 S.C.R. 3; British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868, at para 32.

## **Appendix A: Discussion Paper**



Human Resources  
Development Canada

Développement des  
ressources humaines Canada

# **A DISCUSSION PAPER FOR THE**



**Parliamentary Review  
of the Employment Equity Act**

February 20, 2001

# An Act Respecting Employment Equity

Section 44(1): Five years after the coming into force of the *Act*, and at the end of every five year period thereafter, a comprehensive review of the provisions and operation of this *Act* including the effect of those provisions shall be undertaken by such committee of the House of Commons as may be designated by the House for that purpose.

The amended *Employment Equity Act* was proclaimed in October 1996. In order to prepare for the upcoming parliamentary review, the Labour Standards and Workforce Equity Directorate (LSWED) of Human Resources Development Canada (Labour) is seeking input from the various stakeholders affected by the *Employment Equity Act*. This includes representatives of employers, labour and the four designated groups: women, Aboriginal peoples, visible minorities and persons with disabilities.

To facilitate discussions, several issues are identified below. However, this list is not meant to be exhaustive and LSWED is open to receive ideas and suggestions for change from the various interested parties. The general and essential questions are: Is the *Employment Equity Act* working? If not, why not?

## **Background:**

In 1986, the Canadian Government enacted the first *Employment Equity Act* (EEA). A new *Act* came into force in October 1996. The *Act* covers federally regulated employers in the private sector and Crown Corporations with one hundred or more employees. These employees operate primarily in the Banking, Transportation, and Communications industries. The new *Act* extended coverage to the federal public service.

Currently, the *Act* applies to about 450\* private sector companies and Crown Corporations employing approximately 600,000 people. It also covers the federal public service, which employed approximately 178,000 people in 1999. The Federal Contractors Program for Employment Equity (FCP) requires employers who do business with the Government of Canada to achieve and maintain a fair and representative workforce. There are approximately 850 companies under the FCP and they employ more than one million people.

Together, the workforce under the *Act* and that under the FCP represent about 12% of the Canadian labour market (most of the Canadian labour market is under provincial jurisdiction).

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\* For the year 1999, 330 employers submitted reports

Between 1987 and 1998, the representation of members of the four designated groups in the workforce under the *Employment Equity Act* has increased.

Percentage of Designated Groups in Workforce			
	1987	1999	Workforce Availability (1996).
Women	40.9	44.8	46.4
Aboriginal Peoples	0.7	1.5	2.1
Persons with Disabilities	1.6	2.4	6.5 <sup>#</sup>
Visible Minorities	5.0	10.5	10.3

### Context:

Employment equity legislation is being looked at in times of increasing globalisation and the demand for specialised skills in a knowledge based economy. An increased available work pool provides a competitive edge. From a societal perspective, employment equity works towards an inclusive society. The recent Speech from the Throne committed the Canadian Government to create a more inclusive society, a society in which social progress and democracy lead to economic prosperity.

### Purpose of the *Employment Equity Act*:

“The purpose of this *Act* is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.”

Is the *Act* working effectively towards the fulfilment of its purpose?

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• Statistic Canada's census date

<sup>#</sup> This number is from the 1991 survey. There was no survey in 1996.

## **Designated Groups:**

Women, Aboriginal Peoples, persons with disabilities and visible minorities are the original four designated groups. While employer records and payroll determine the identification of women, other designated groups are identified through a voluntary survey.

Between 1987 (the first year data was collected under the *Act*) and 1999, the employment situation of designated groups has improved in the workforce under the *Act*.

- **Aboriginal Peoples**

The representation of this group in 1999 (the latest data available) reached 1.5% of the workforce under the *Act*, against availability in the Canadian labour market of 2.1%. What measures are working? What else needs to be done?

- **Visible Minorities**

The representation of this group in the workforce reached 10.5% in 1999, compared to a labour market availability of 10.3%. Some have suggested that, if not disadvantaged, why should visible minorities remain in the program? For three simple reasons: some have suggested that certain visible minority groups fare better than others, and the global average hides important variations within the sub-groups; the 10.3% availability figure is a 1996 estimate, and a new census will show an increase in the visible minority workforce; and the 1999 Annual Report shows that this group is still under-represented in 8 out of 14 groups. It is possible to adjust the definition of visible minorities. Alternatives include the American model where certain minority groups are targeted or an economic model where groups could be identified according to their earnings. This would be a dynamic model which would re-target groups based on the data from each census.

- **Persons With Disabilities**

The representation of persons with disabilities in the workforce under the *Act* has improved only slowly since 1987, reaching 2.4% in 1999 against a labour availability of 6.5%. A look at the definition of the group may yield a different availability estimate. The World Health Organisation is proposing a new definition of disability, which recognises that people with certified or perceived impairments are disabled by society's failure to accommodate their needs.

- **Women**

Women's representation has reached 44.8% in 1999, against availability in the labour force of 46.4%. However, women remain under-represented in 7 out of the 14 occupational groups.

## **Employee Involvement:**

The *Act* requires consultations and collaboration with representatives of employees in the development of the employment equity plan. Is this approach working? Are co-operative arrangements the norm?

## **Employer Obligations:**

The core obligations are to survey their workforce, to carry out a workforce analysis to determine any under-representation of members of designated groups, to review their employment systems, policies and practices to identify and remove employment barriers and to prepare an employment equity plan. The plan must include a timetable and include short (1-3 years) and long term numerical goals. The plan must, if implemented, constitute “reasonable progress” while employers must “make all reasonable efforts to implement” their plan.

## **Reporting Obligations:**

All employers must report on quantitative data, prescribed by regulations for private sector employers. Private sector employers also include qualitative information in a narrative section of their report. These reports are submitted to the Minister of Labour who makes the reports public. Sanctions may be applied for not reporting in compliance with the *Act*.

## **Compliance:**

The Canadian Human Rights Commission (CHRC) is responsible for enforcing the obligations of employers to implement employment equity. The first step is compliance audits. For the purpose of conducting a compliance audit, a compliance officer will have access to the employer’s premises and records. The *Act* calls on the Commission, wherever possible, to resolve non-compliance issues through persuasions and negotiation. For example, the compliance officer will attempt to negotiate a written undertaking with the employer.

Where a compliance officer feels that the employer has failed to make reasonable efforts to implement employment equity, the Commission may issue a directive. Either at the request of an employer or of the Commission, the matter may be referred to an Employment Equity Review Tribunal. The Tribunal may confirm, rescind or vary the Commission’s directive. Any order made by the commission may be made an order of the Federal Court and further non-compliance can result in a contempt charge.

## **Canadian Human Rights Act (CHRA) Review:**

The Canadian Human Rights Act Review Panel, under the Chair of the Honourable Gérard V. La Forest, made a number of recommendations concerning the *Employment Equity Act*. They are:

- that the *CHRA* and the *Employment Equity Act* work together to make it possible to obtain an employment equity order like the one approved by the Supreme Court of Canada in Action Travail de Femmes, based on a close examination of an employer's work force and workplace. Further, it recommended that should consequential amendments made to the *CHRA* by the *EEA* stand in the way of this, that they be changed;
- that a process be established to ensure that community groups have a way of giving input into the Commission's implementation of its responsibilities under the *EEA*;
- that the Commission and its auditors press for the broadest interpretation of their powers and that any decision-maker resolve any doubt about the scope of these powers in favour of the Commission;
- that the relationship between the *CHRA* and the *EEA* be considered in the five-year review recommended for the *CHRA*; and
- that the *CHRA* ensure that nothing in the *EEA* be interpreted to limit the powers of the Commission or the Tribunal under the *CHRA*.

*The Labour Branch of HRDC is soliciting comments from stakeholders.*

## **Appendix B: List of Participating Stakeholders**

### **Consultations**

Aboriginal Futures Corporation  
Action travail des femmes  
Aéroports de Montréal  
Air France Canada  
Anduhyaun Inc.  
Assembly of First Nations  
Assembly of Manitoba Chiefs  
Association of Friendship Centres  
ATCO Frontec  
ATCO Structures  
Atlantic Canada Opportunities Agency  
Atlantic Tractors and Equipment  
ATW Management Communications  
Bank of Canada  
Bank of Montreal  
Banque Nationale du Canada  
BC Equal Opportunity Secretariat  
BC Federation of Labour  
BC Office for Disability Issues  
Bell Mobility  
B.E.S.T. Group  
Black Community Workgroup of Halifax Cooperative Ltd.  
Black Educator's Association  
Calgary Aboriginal Urban Affairs  
Calgary Airport Authority  
Calgary Association of the Deaf  
Calgary Immigrant Women's Association  
Canada Customs and Revenue Agency  
Canada Post  
Canadian Association of the Deaf  
Canadian Association of University Teachers (CAUT)  
Canadian Bankers Association  
Canadian Council on Rehabilitation and Work  
Canadian Food Inspection Agency  
Canadian Hearing Society  
Canadian Human Rights Commission  
Canadian Imperial Bank of Commerce  
Canadian Labour Congress  
Canadian Mental Health Association  
Canadian Mortgage and Housing Corporation (CMHC)  
Canadian National Institute for the Blind

Canadian National Rail  
Canadian Pacific Rail  
Canadian Paraplegic Association  
Canadian Space Agency  
Canadian Union of Postal Workers (CUPW)  
Canadian Wheat Board  
Canadian Women's Foundation  
Canon Canada Inc.  
Cargill Ltd.  
Carrefour de liaison et d'aide multiethnique  
CBC/Radio-Canada  
Centre de recherche-action sur les relations raciales (CRARR)  
Centre for Aboriginal Human Resource Development  
Centre Génération Emploi  
Citigroup  
Citizenship and Immigration Canada  
Cogema Resources  
Comité d'adaptation de la main-d'œuvre (CAMO) pour personnes handicapées  
Comité d'adaptation de la main-d'œuvre (CAMO) pour personnes immigrantes  
Communication, Energy and Paperworkers Union of Canada (CEP)  
Congress of Union Retirees of Canada (CURC)  
Correctional Service of Canada  
Council of Canadians with Disabilities  
Dalhousie University  
Day & Ross Inc.  
Department of Fisheries and Oceans  
Department of Indian Affairs & Northern Development  
Disabled Persons Commission (Halifax)  
Disabled Women's Network  
Educonsults Systems Inc.  
Employment Projects of Winnipeg Inc.  
Farm Credit Corporation  
Federal Employers in Transportation and Communication (FETCO)  
Federated Co-operative  
Fédération des travailleurs et travailleuses du Québec (FTQ)  
Femmes Autochtones du Québec (Québec Native Women)  
File Hills Tribal Council  
Greater Toronto Airport Authority  
Helping Circle Employment Services  
Hub Meat Packers  
IAM Cares  
Immigrant Women of Saskatchewan  
Immigrant Services Society of BC  
Immigration and Refugee Board  
Independent Living Resource Centre of Calgary  
Independent Living Resource Centre of Winnipeg

Innotech/Excaire  
International Air Transport Association (IATA)  
International Centre of Winnipeg  
International Longshore and Warehouse Union 500 (ILWU 500)  
Interprovincial Association on Native Employment  
Jamaica Association of Montreal  
Angela Julien, Diversity Consultant - Vancouver Multicultural Society  
Mana Research Ltd  
Manitoba Association for Rights and Liberties  
Manitoba Hydro  
Manitoba Employment Equity Practitioner's Association (MEEPA)  
Manitoba Telecom Services  
Manitoba Transportation  
Manitoba Women's Advisory Council  
Manitoba Women's Directorate  
Métallos  
Metis Nation of Alberta, Economic Development  
Metis Nation of Alberta, Labour Market Development  
Métis National Council  
Miziwe Biik Aboriginal Employment & Training  
Montreal Association for the Blind  
Motorola  
National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-TCA)  
National Congress of Canadians of Origins in India  
National Council of Jamaicans & Supportive Organizations in Canada (NCJSOC)  
National Council of Visible Minorities  
National Energy Board  
National Union of Public and General Employees (NUPGE)  
Neil Squire Foundation  
New Brunswick Native Indian Women's Council, Inc.  
NJ Weiner Consulting  
Northwest Company  
Nova Scotia Advisory Council on the Status of Women  
Ontario Council of Agencies Serving Immigrants (OCASI)  
Ontario Federation of Labour  
Options Outreach  
Parks Canada  
Petro Canada  
POLARIS  
Professional Institute of the Public Service of Canada (PIPSC)  
Province of BC Multiculturalism and Immigration  
Public Service Alliance of Canada (PSAC)  
Public Service Commission (PSC)  
Public Service Employee Relations Commission  
Réseau femmes africaines horizon 2015

Royal Bank Financial Group  
Russel Metals Inc.  
Sask Tel  
Saskatchewan Anti Racism Network  
Saskatchewan Government and General Employees' Union (SGEU)  
Saskatchewan Public Service Commission (Aboriginal Programs)  
Saskatchewan Voice of People with Disabilities  
Scotia Bank Group  
Le Service Intégration Travail Outaouais (SITO)  
Skills for Change  
Social Planning Council of Winnipeg  
Southeast Deaf and Hard of Hearing Services  
South Saskatchewan Independent Living Centre  
Strategic Directions and Solutions (Winnipeg)  
TD Financial Group  
Telecommunications Workers Union (TWU)  
Tobique Employment & Training  
Toronto Employment Equity Practitioner's Association (TEEPA)  
Transport Canada  
Transportation Communications International Union (T.C.U.)  
Treasury Board Secretariat  
Université de Montréal  
University of British Columbia  
University of Guelph  
University of Manitoba  
U.P.S.  
Urban Alliance on Race Relations  
Users Committee Montreal Association for the Blind  
Vancouver Airport Authority  
Vancouver Association of Chinese Canadians  
Vidéotron Communications  
Walk and Roll Services  
Warren Gibson Ltd.  
Winnipeg Airport Authority  
Winnipeg Chamber of Commerce  
Women in Trades and Technology (WITT)  
Workbridge  
York University Faculty Association  
Young Women's Christian Association (YWCA) of Greater Toronto

## **Written Submissions**

Barbara Bartibogue  
Melana Borovitch, Royal Bank  
Canadian Association of University Teachers (CAUT)  
Canadian Bankers Association  
Canadian Council of Muslim Women  
Canadian Council on Rehabilitation and Work  
Canadian Hearing Society  
Fédération des travailleurs et travailleuses du Québec (FTQ)  
Vanessa Hammond  
McLaren Consulting Group Inc.  
Betty Nobel  
Ontario Power Generation  
Sharlene Paul  
Professional Institute of the Public Service of Canada (PIPS)  
Public Service Alliance of Canada (PSAC)  
Le Service Integration Travail Outaouais (SITO)

## **Consultation Dates**

March 20	Calgary
March 22	Vancouver
March 23	Winnipeg
April 10	Regina
April 30	Montréal
May 3	Halifax
May 4	Moncton
May 7	Ottawa/Hull
May 23	Toronto
June 14	Montréal

\*\* Bilateral consultations were also held, one-on-one, with various groups from January until June.

**Appendix C: Fact Sheet on Members of Designated Groups**  
**CANADA, 1996**

<b>TOTAL POPULATION</b>	<b>Both Sexes</b>	<b>Males</b>	<b>Females</b>
Total Population	28,528,125	14,046,880	14,481,245
Population Representation	100.0%	49.2%	50.8%
15 years and over	22,628,920	11,022,450	11,606,465
Workforce	15,547,115	8,332,190	7,214,925
Workforce Representation	100.0%	53.6%	46.4%
In Labour Force	14,812,700	8,007,950	6,804,750
Participation Rate	65.5%	72.7%	58.6%
Unemployment Rate	10.1%	10.2%	10.0%
Employment/Population Ratio	58.9%	65.2%	52.8%
Income (Full-Time, Full-Year)	\$37,556	\$42,488	\$30,130
Wage Gap (Male/Female)	N/A	N/A	70.9%
<b>VISIBLE MINORITIES</b>	<b>Both Sexes</b>	<b>Males</b>	<b>Females</b>
Total - Visible Minorities	3,197,480	1,565,550	1,631,925
Population Representation	11.2%	5.5%	5.7%
15 years and over	2,419,140	1,166,790	1,252,345
Workforce	1,593,635	843,765	749,865
Workforce Representation	10.3%	5.4%	4.8%
In Labour Force	1,538,755	817,955	720,800
Participation Rate	63.6%	70.1%	57.6%
Unemployment Rate	14.2%	13.2%	15.3%
Employment/Population Ratio	54.6%	60.9%	48.8%
Income (Full-Time, Full-Year)	\$32,455	\$36,104	\$27,465
Wage Gap (Male/Female)	N/A	N/A	76.1%
<b>ABORIGINAL PEOPLES</b>	<b>Both Sexes</b>	<b>Males</b>	<b>Females</b>
Total - Aboriginal Peoples	799,010	390,870	408,135
Population Representation	2.8%	1.4%	1.4%
15 years and over	518,590	247,385	271,205
Workforce	321,740	170,215	151,525
Workforce Representation	2.1%	1.1%	1.0%
In Labour Force	302,350	161,605	140,745
Participation Rate	58.3%	65.3%	51.9%
Unemployment Rate	24.0%	26.5%	21.1%
Employment/Population Ratio	44.3%	48.0%	41.0%
Income (Full-Time, Full-Year)	\$29,684	\$33,147	\$25,577
Wage Gap (Male/Female)	N/A	N/A	77.2%

**1991**

<b>PERSONS WITH DISABILITIES (LIMITED AT WORK/PERCEPTION)</b>	<b>Both Sexes</b>	<b>Males</b>	<b>Females</b>
Total - Persons with Disabilities (LAW/P)	1,285,220	634,445	650,770
Population Representation	7.0%	3.5%	3.5%
Workforce	977,865	524,525	453,340
Workforce Representation	6.5%	3.5%	3.0%
In Labour Force	771,400	426,795	344,595
Participation Rate	60.0%	67.3%	53.0%
Unemployment Rate	18.5%	18.1%	19.1%
Employment/Population Ratio	48.9%	55.1%	42.8%
Income (Full-Time, Full-Year)	\$29,185	\$32,975	\$23,380
Wage Gap (Male/Female)	N/A	N/A	70.8%

N/A = Not Available

Prepared by: Data Development Section, Labour Standards and Workplace Equity Division

Operations Directorate, Labour Branch, HRDC

Source: 1996 Census of Canada, 1991 Census of Canada and 1991 Health and Activity Limitation Survey

## **Appendix D: The views of some witnesses**

### **Act's Objectives**

“{PRIVATE }The CBA continues to believe that, as a policy instrument designed to promote fundamental long-term change, the Employment Equity Act (EEA) in its present form remains an effective, appropriately focused and balanced law and is an important component, although not the only one, of the efforts that will help Canada achieve an inclusive society, a goal established by the government in the February 2001 Throne Speech.”

Canadian Bankers Association  
Submission to the Labour Program, July 2001

“The Act has forced Employers to focus both on fairness and the bottom line. There is no question in my mind that employers should be fair. The Act has brought attention to fair hiring practices at Day and Ross, and better internal communication of this critical corporate objective. Without the Act, employment equity would not be as high a priority issue as it currently is”.

Ken Nichols  
Day & Ross Moncton

“Is the Act working? The easiest answer to that is that it is because it exists as a law and because time and education have allowed for its intent to be increasingly internalized and accepted by those affected. (...) It is working because it plays a key role in gains being made. Where there are concerns, it is not because there are concerns about the presence of the Act, but about areas where improvements could be made or limitations that have been imposed by the Act.”

Professional Institute of the Public Service of Canada  
Submission to the Labour Program, June 2001

“Look at the broader picture! This Act can be viewed as the flip side of the coin. It can be shown that without it, social costs would be much higher. Health care costs, for example, would be greater if members of designated groups were not supported this way. People who aren't employed usually suffer more depression and illness, require social assistance and claim unemployment insurance. These things would cost society even more than whatever EE programs cost”.

Robyn Mackie  
Calgary Association of the Deaf

“Muslim women with disabilities face multiple barriers not only with prospective employers but within their own Muslim community; they are often not valued as important, contributing members of the community. ... These difficulties faced by Muslim women are compounded by their appearance, dress, skin colour, language foreign education and training. The Employment Equity Act needs to address the need to compare relative advancements that women have made to those of minority women.

While society may believe that women have made gains with regard to employment, minority women have not made those advances. Women of colour and immigrant women continue to lag behind other women in the workforce.”

Nina Karachi-Khaled  
Canadian Council of Muslim Women, Toronto

### **Public education and awareness**

“Workplace education is essential in breaking down misperceptions and prejudice. Attitudes do not change by chance. Getting people to understand the full implications of EE and the diversity in the Canadian population will take a sound public education program”.

Johann Tan  
Public Service Alliance of Canada, Calgary

“National public education campaigns on issues relating to employment equity is a responsibility of the federal government under the Employment Equity Act. Heritage Canada has very good multi-culturalism and diversity campaigns, but it is not enough to rely on them to effect real change in the workplace. What is needed are specific EE campaigns to raise awareness of all the workplace parties”.

Hassam Youssef  
Canadian Labour Congress, Ottawa

### **Program coherence**

“We ran some employment services programs with a \$600,000 grant from HRDC. We succeeded in getting some 200 people back to work and off the unemployment and social assistance rolls. A study we made showed a cost savings of \$1.5M for the Canadian economy. I think such programs should be more widespread and obtaining funding for them made easier. Let’s present the business case!”

Barry Lindemann  
Canadian Paraplegic Association, Calgary

“Employers and service providers alike need to be open and flexible to new approaches. Through funding we received from HRDC (Aboriginal Human Resource Development Agreement), we hired Aboriginal liaison officers to establish links between us and various employers and our people at the place of work. We were very successful in facilitating the hiring of Aboriginal people, by placing these liaison officers right in the companies’ HR departments. As it relates to employment equity, we believe the Aboriginal training resources that we administer for HRDC should go into training programs and initiatives such as the Liaison project should be cost shared by employers.

Since employers may not be willing or unable (we cannot define the exact reason for it) to cost share or invest in a project of this nature, we feel that providing full funding is necessary and worthwhile. The benefits from this approach are numerous but it is important to note that once the Aboriginal training funds are exhausted, it will be unfortunate for us all if this initiative is not continued".

Larry Wucherer

Center for Aboriginal Human Resources Development, Winnipeg

"We hired a staffing development officer for six months to approach and educate employers and produce promotional material. We developed tool kits for employers to help them with the hiring and promotion of Aboriginal women. More could be done if additional funds were available".

Delores LaPratt-Houseman

Femmes Autochtones du Québec

"There is a great training program that exists for persons with disabilities, called the Skills Training Program (STP). Participants are given 12 weeks of training to work at a given job. The employer agrees that when the term is completed, the candidate is interviewed for the job and the employer must hire the person if he or she meets the requirements. The only problem with this program is that employers do not know it exists; this is mainly a result of the lack money for publicity. It is critical to create awareness for this program".

Laura Peters

Southeast Deaf and Hard of Hearing Services, Moncton

## Unions

"At a minimum, yearly consultations with employees and their unions seem to me like a good opportunity for management to share the results of the reporting process. I feel that some progress is being made to work with unions on EE Plans and ESR. In my opinion, EE should not be a bargaining issue, but at the same time there is a need to work effectively with unions. The Act should remain as flexible as possible to allow the joint work to be done effectively. I would recommend that the Act not be amended on this issue".

Shirley Boucher

Canada Post, Ottawa

"...It is imperative that employment equity programs be negotiated. Unions, where they are present, must be involved in every step of the process. ... In practice, the participation of employees and unions is useful to employers in terms of avoiding possible resistance. It also allows a collective assessment of what may be most appropriate in a particular

workplace, by those who know the situation best. ... The Act and Regulations must be made clear, for experience teaches us that, where an employer wishes to avoid us, only the law will force him to involve us.”

Fédération des travailleurs et

des travailleuses du Québec (FTQ)

Submission to the Labour Program, April 2001

“The Public Service Alliance of Canada recommends that Regional Employment Equity Councils comprised of employers, unions and organizations serving the interests of designated groups be established and meet regularly. These councils would serve to bridge the experiences of those who are covered by the Act. They would seek the appropriate from HRDC and CHRC regional staff to resolve particular difficulties. They would foster an exchange of information and strategies and the building of networks with community groups in order to support the effective implementation of employment equity in workplaces”.

Public Service Alliance of Canada

Submission to the Labour Program, June 2001

“This legislation is very significant in terms of promoting the values of citizenship we adhere to and the creation of a just and democratic society. It helps position Canada in the global market place. But to be a global leader, Canada needs to invest in human capital and to maximize the skills and talents in the country. The Act’s defining characteristic should be to address the fragmentation of jurisdictional issues between federal and provincial levels. We need to link the EEA to core values and to go beyond numbers. The contextual issues have to be addressed and assessed. We acknowledge that there are systemic barriers but no support is given at community level to help address these barriers. There is a need for connectivity at all levels to broader values”.

Peggy Edwards

Skills for Change, Toronto

“The organisation I represent, IAM Cares, can help with integration and retention of persons with disabilities. I get the feeling, based on what I see happening each year as the cycle of reporting comes back, that there is a flurry of activity in the spring. Many persons with disabilities get short-term contracts in the spring when its time to report. And that’s about the extent of it. I think we need to develop stronger links between social organisations such as ours and employers to help with ensuring persons with disabilities get a chance to stay on in employment and that their needs are accommodated more effectively”.

Jennifer Lee

IAM Cares, Vancouver

## **Reporting**

"The task to prepare the EE audit is huge and quite onerous (\$50 000 is a lot of money for a small organization), and the preparation of the annual reports is quite time consuming. Personally, I would rather focus on our employment systems to try to correct any problems. In a small organization, it is hard to convince higher management to allocate resources to this process. The Act is such that the reporting requirements are quite clear, but the obligation to look at employment systems that flows from the equity plans that we prepare are not monitored or widely encouraged".

Sharon Caddigan  
Calgary Airport Authority

"There are discrepancies in the numbers regarding visible minorities. The availability data doesn't account for people who have given-up hope of ever finding a job, those who prefer not to because of past discrimination, and those who refuse to participate in the census. The data is also perceived to be inaccurate because it is believed that some employers, when it is time to fill the EE reports have employees lie about their status so they can get their numbers up".

Janice Jones  
Educonsults Systems, Vancouver

"I feel that everyone is implementing the EEA in isolation from each other. The Commission has to take an active part in sending a message to organizations that EE is important and must be managed properly. This should take place consistently, not just at Parliamentary Review time. It would be helpful if the Act was more specific and more clearly written for practitioners. If the focus was changed from number crunching to qualitative measures, more results could emerge as a result".

Karen Good  
Bell Mobility, Toronto

## **Linkage to CHRA**

"The first prohibition - against lodging a complaint based on findings under the EEA - contributes to the security of information acquired during an audit and the prevention of the flow of information between functions. It is founded on the principle of natural justice and procedural fairness, and the banking industry strongly supports this provision. We also strongly support the second prohibition against laying a complaint based on statistics alone. This addresses a very fundamental, long-standing concern of the banking industry: that numerical data, while useful and important, must not be the priority feature or leading criteria for assessing employment equity performance. We explain our concern and views on this critical issue in the following sections."

Canadian Bankers Association  
Submission to the Labour Program, July 2001

"The NCARR case relied heavily on equity representation statistics that the department had compiled on a voluntary basis prior to federal public service coverage under the Employment Equity Act. Statistics alone were not enough: personal testimony; inter-departmental memoranda and minutes; an Institute survey of its members in Health Canada; all helped to solidify the case. However, without access to such statistics, an NCARR case will not happen again."

Professional Institute of the  
Public Service of Canada  
Submission to the Labour Program, June 2001

# Appendix E - Annotated Act

## *Employment Equity Act*

1995, c. 44

### An Act respecting employment equity

[Assented to 15<sup>th</sup> December, 1995]

#### THE ACT

#### ANNOTATIONS

Her Majesty, by and with the advice and consent of the Senate and House of Commons, enacts as follows:

#### SHORT TITLE

1. This Act may be cited as the *Employment Equity Act*.

This Bill is designed to enhance employment equity practices.

#### PURPOSE OF ACT

2. The purpose of this Act is to achieve equality in the workplace so that no persons shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

This section defines the legislative intent. The broad purpose is to achieve equality in the workplace, and to correct conditions of disadvantage experienced by the four designated groups. In achieving equality, the need for special measures and the accommodation of differences, not just identical treatment, is explicitly recognized. This approach to equality finds its constitutional basis in Section 15 of the Charter of Rights and Freedoms, which states that every individual «has the right to the equal protection of the law without discrimination» and therefore cannot be considered *reverse discrimination*.

#### INTERPRETATION

3. In this Act,

«aboriginal peoples» means persons who are Indians, Inuit or Métis;

«Canadian workforce» means all persons in Canada of working age who are willing and able to work;

Working age is defined by the relevant Labour Code (federal, provincial or territorial) relevant to the employer's jurisdictional area.

"Chairperson" means the chairperson of the Canadian Human Rights Tribunal;

"Commission" means the Canadian Human Rights Commission established under section 26 of the *Canadian Human Rights Act*;

"compliance officer" means a person designated as an employment equity compliance review officer pursuant to subsection 22(3);

"designated groups" means women, aboriginal peoples, persons with disabilities and members of visible minorities;

"members of visible minorities" means persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour;

Women, Aboriginal peoples persons with disabilities and members of visible minorities are the original four designated groups.

The data suggest that certain visible minority groups fare better than others. The population groups defined as a visible minority include Chinese, South Asian, Blacks, Arab/West Asian, Filipinos, Japanese, Korean, South East Asian and Latin American. Each ethnic visible minority group is facing a unique situation in the Canadian labour market.

In 1996, Latin Americans, Blacks and Arabs/West Asians faced an unemployment rate of 19.5%, 19.3% and 18.5% respectively compared to 10.1% in the total population. On the other hand, Japanese has the lowest unemployment of 6.6%.

Latin Americans, Filipinos, Koreans and Southeast Asians had less than \$30,000 full-time, full-year income in 1995. The only visible minority group that had income more than the total population was Japanese with \$47,700 compare to \$37,500. However, Japanese only represents 0.2% of the total population or approximately 2% of the visible minority population.

Koreans, Filipinos and West Asians had the highest educational attainment. The percentage with at least a bachelor's degree were 29.9%, 28.2% and 26.3% respectively compared to 13.3% of the total population. On the contrary, the percentage of Latin Americans, Blacks and Southeast Asians who earned at least a bachelor's degree were lower than the total population.

"Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;

"Panel" [Repealed, 1998, c. 9, s. 37]

"persons with disabilities" means persons who have a longterm or recurring physical, mental, sensory, psychiatric or learning impairment and who

The term «disadvantaged» echoes the Charter of Rights and Freedoms, in order to refer to the enabling provisions in the Charter for disadvantaged individuals and groups.

- (a) consider themselves to be disadvantaged in employment by reason of that impairment, or
- (b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment,

and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace;

"prescribed" means prescribed by the regulations;

"private sector employer" means any person who employs one hundred or more employees on or in connection with a federal work, undertaking or business as defined in section 2 of the Canada Labour Code and includes any corporation established to perform any function or duty on behalf of the Government of Canada that employs one hundred or more employees, but does not include

- (a) a person who employs employees on or in connection with a work, undertaking or business of a local or private nature in the Yukon Territory or the Northwest Territories, or
- (b) a departmental corporation as defined in section 2 of the *Financial Administration Act*;

This is to provide the territories with the same jurisdictional framework as the provinces with respect to federally and non-federally regulated employers.

"representatives" means

- (a) those persons who have been designated by employees to act as their representatives, or
- (b) bargaining agents, where bargaining agents represent the employees;

"Tribunal" means an Employment Equity Review Tribunal established by subsection 28(1).

1993, c. 28, s. 78; 1995, c. 44, s. 3; 1998, c. 9, s. 37, c. 15, s. 25.

## APPLICATION

4. (1) This Act applies to

- (a) private sector employers;

Private sector employers covered by the Act are federally regulated (essentially Crown Corporations and enterprises operating in the Banking, Inter-Provincial Transportation, and Communications sectors) with 100 or more employees on any day in the calendar year.

- (b) the portions of the public service of Canada set out in Part I of Schedule I to the *Public Service Staff Relations Act*; Coverage of approximately 147,000 (as of March 31, 2000) public servants for whom Treasury Board is the employer.
- (c) the portions of the public service of Canada set out in Part II of Schedule I to the *Public Service Staff Relations Act* that employ one hundred or more employees; and This sub-section deals with «separate employers», i.e. those portions of the public service for whom Treasury Board is not the employer. This includes 15 of the 30 separate employers, that is, those separate employers with 100 or more employees.
- (d) such other portion of the public sector employing one hundred or more employees, including the Canadian Forces and the Royal Canadian Mounted Police, as may be specified by order of the Governor in Council on the recommendation of the Treasury Board, in consultation with the minister responsible for the specified portion.
- (2) For the purposes of this Act,
- (a) the Royal Canadian Mounted Police is deemed to consist only of its members within the meaning of subsection 2(1) of the *Royal Canadian Mounted Police Act*; A technical section dealing only with the RCMP. Coverage is split. Treasury Board is the employer of civilian employed and they are already covered under Section 4(1)(b); the RCMP as a separate employer is considered the employer for uniformed members.
- (b) the Royal Canadian Mounted Police is deemed not to be included in Part I of Schedule I to the *Public Service Staff Relations Act*; and
- (c) civilian employees appointed or employed in accordance with section 10 of the *Royal Canadian Mounted Police Act* are deemed to be included in Part I of Schedule I to the *Public Service Staff Relations Act*.
- (3) Members of the Canadian Forces and the Royal Canadian Mounted Police are deemed to be employees for the purposes of this Act.
- (4) The Treasury Board and the Public Service Commission, each acting within the scope of its powers, duties and functions under the *Financial Administration Act* and the *Public Service Employment Act*, are responsible for carrying out the obligations of an employer under this Act in relation to employees employed in those portions of the public service referred to in paragraph (1)(b). Employer obligations fall jointly on Treasury Board and the Public Service Commission to the extent that each has any power or responsibility with respect to the obligations under the Acts that govern their activities, namely the *Financial Administration Act* and the *Public Service Employment Act*.

(5) Every portion of the public sector referred to in paragraphs (1)(c) and (d) is deemed to be an employer for the purposes of this Act in relation to employees employed in that portion except that, with respect to any of those portions for which the Public Service Commission exercises any power or performs any duty or function under the *Public Service Employment Act*, the Public Service Commission and that portion are responsible for carrying out the obligations of an employer under this Act.

(6) In this Act, a reference to an employer is deemed, in relation to those portions of the public sector referred to in

(a) paragraph (1)(b), to be a reference to the Treasury Board and the Public Service Commission, each acting within the scope of its powers, duties and functions under the *Financial Administration Act* and the *Public Service Employment Act*; and

(b) paragraphs (1)(c) and (d) for which the Public Service Commission exercises any power or performs any duty or function under the *Public Service Employment Act*, to be a reference to the employer and the Public Service Commission.

(7) The Treasury Board and the Public Service Commission may, for the purpose of carrying out their obligations under this Act in relation to a portion of the public service or other portion of the public sector referred to in subsection (1), authorize the chief executive officer or deputy head concerned to exercise, in relation to that portion, any of the powers and perform any of the duties and functions of the Treasury Board or the Public Service Commission, as the case may be, referred to in this section.

(8) Any chief executive officer or deputy head authorized under subsection (7) to exercise any of the powers and perform any of the duties and functions of the Treasury Board or Public Service Commission may, subject to and in accordance with the authorization given to that officer or deputy head, authorize one or more persons to exercise any of those powers and perform any of those duties and functions.

Employer obligations also fall jointly on «separate employers» and the public Service Commission, again to the extent that each has any power or responsibility with respect to that obligation. In other words, there are some separate employers, such as CCRA, whose enabling legislation gives them full authority over human resource management, there are others for who the PSEA still applies and so the TBS and PSC still have a role to play in this area.

Clarifies use of the term «employer» in this Act. Although the public Service Commission is not technically speaking the «employer» for the public service and separate employers, the term is deemed, where applicable, to apply to it and to Treasury Board. See also (4) and (5) above.

Delegation of powers to department heads by Treasury Board is authorised.

Sub-delegation by department heads is authorised.

## PART I

### EMPLOYMENT EQUITY

#### Employer Obligations

This Part sets out employer obligations in implementing employment equity, and in reporting.

5. Every employer shall implement employment equity by

(a) identifying and eliminating employment barriers against persons in designated groups that result from the employer's employment systems, policies and practices that are not authorized by law; and

(b) instituting such positive policies and practices and making such reasonable accommodations as will ensure that persons in designated groups achieve a degree of representation in each occupational group in the employer's workforce that reflects their representation in

(i) the Canadian workforce, or

(ii) those segments of the Canadian workforce that are identifiable by qualification, eligibility or geography and from which the employer may reasonably be expected to draw employees.

Part (i) is broader than (ii), and would be used, for example, in the case of entry-level positions with no special qualifications. Part (ii) would be used where special qualifications/licenses etc. Are required.

6. The obligation to implement employment equity does not require an employer

This section clarifies what employment equity is not. In particular, it clarifies that an employer is not required to undergo «undue hardship», nor hire «unqualified persons», nor create new positions. This section is intended to respond to the most common misunderstandings about employment equity. Sub-paragraph (c) confirms that employment equity in the public service does not mean disregarding the merit principle.

(a) to take a particular measure to implement employment equity where the taking of that measure would cause undue hardship to the employer;

(b) to hire or promote unqualified persons;

(c) with respect to the public sector, to hire or promote persons without basing the hiring or promotion on selection according to merit in cases where the *Public Service Employment Act* requires that hiring or promotion be based on selection according to merit; or

(d) to create new positions in its workforce.

In short, despite some media opinions to the contrary this is NOT a quota based system. The idea is for employers to establish numerical goals as a benchmark and to work towards these without jeopardising any competitive edge. In fact, employment equity will work towards enhancing the «bottom line».

7. Notwithstanding any other provision of this Act, where a private sector employer is engaged primarily in promoting or serving the interests of aboriginal peoples, the employer may give preference in employment to aboriginal peoples or employ only aboriginal peoples, unless that preference or employment would constitute a discriminatory practice under the *Canadian Human Rights Act*.
8. (1) Employee seniority rights with respect to a layoff or recall under a collective agreement or pursuant to the established practices of an employer are deemed not to be employment barriers within the meaning of this Act.
- (2) Unless they are found to constitute a discriminatory practice under the *Canadian Human Rights Act*, employee seniority rights other than those referred to in subsection (1), including rights acquired under workforce adjustment policies implemented when an employer is downsizing or restructuring, under a collective agreement or pursuant to an established practice, are deemed not to be employment barriers within the meaning of this Act.
- (3) Notwithstanding subsections (1) and (2), where, after a review under paragraph 9(1)(b), it appears that a right referred to in either of those subsections that is provided for under a collective agreement may have an adverse impact on the employment opportunities of persons in designated groups, the employer and its employees' representatives shall consult with each other concerning measures that may be taken to minimize the adverse impact.
- (4) The following are not, in relation to the public sector, employment barriers within the meaning of the Act, namely,

Aboriginal organisations may hire only Aboriginal peoples, or give preference to hiring Aboriginal peoples. They should still strive, however, for fair gender representation and representation of persons with disabilities in reference to their available workforce.

Seniority rights are protected. They are not considered to be barriers, which must be eliminated under this Act [see Section 10(1)(b)], unless they are found to constitute a discriminatory practice under the CHRA (which already contains seniority exclusions).

For the public service where there are no seniority rights, the Workforce Adjustment Directive is similarly deemed not to be a barrier, nor are priorities for appointment by the PSC.

priorities for appointment under the *Public Service Employment Act* or regulations made by the Public Service Commission; and

(b) workforce adjustment measures established by the Treasury Board, including measures set out in the Workforce Adjustment Directive, or by the Public Service Commission or any other portion of the public sector referred to in paragraphs 4(1)(c) and (d).

9. (1) For the purpose of implementing employment equity, every employer shall

(a) collect information and conduct an analysis of the employer's workforce, in accordance with the regulations, in order to determine the degree of the under-representation of persons in designated groups in each occupational group in that workforce; and

(b) conduct a review of the employer's employment systems, policies and practices, in accordance with the regulations, in order to identify employment barriers against persons in designated groups that result from those systems, policies and practices.

(2) Only those employees who identify themselves to an employer, or agree to be identified by an employer, as aboriginal peoples, members of visible minorities or persons with disabilities are to be counted as members of those designated groups for the purposes of implementing employment equity.

(3) Information collected by an employer under paragraph (1)(a) is confidential and shall be used only for the purpose of implementing the employer's obligations under this Act.

Sets out the employer's obligation to proactively identify employment equity barriers by undertaking a workforce survey, by analysing the data to identify under-representation, and by undertaking an employment systems review to identify barriers to employment of designated group members.

Sub-section (2) confirms that membership in a designated group may be determined only by way of self-identification. Note: Self-identification is prescribed both here, for data collection, and in Section 18(4) for reporting. Section 25(1.1)(b) allows an employer to pass on doubts about under-representation due to unwillingness to self-ID to a compliance officer who will take account of this while conducting an audit.

*Canadian Human Rights Act, Section 10:* «It is a discriminatory practice for an employer, employee organisation or employer organisation

(a) to establish or pursue a policy or practice, or  
(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals or any employment opportunities on a prohibited ground of discrimination.»

The contents of an employment equity plan (and therefore the criteria against which the employer's plan is measured during an audit) are set out in this section. Every plan must contain:

(a) specifies the positive policies and practices that are to be instituted by the employer in the short term for the hiring, training, promotion and retention of persons in designated groups and for the making of reasonable accommodations for those persons, to correct the under-representation of those persons identified by the analysis under paragraph 9(1)(a);

(b) specifies the measures to be taken by the employer in the short term for the elimination of any employment barriers identified by the review under paragraph 9(1)(b);

(a) qualitative measures to address under-representation, including positive policies and practices, and reasonable accommodation,

- (c) establishes a timetable for the implementation of the matters referred to in paragraphs (a) and (b);
- (d) where under-representation has been identified by the analysis, establishes short term numerical goals for the hiring and promotion of persons in designated groups in order to increase their representation in each occupational group in the workforce in which under-representation has been identified and sets out measures to be taken in each year to meet those goals;
- (e) sets out the employer's longer term goals for increasing the representation of persons in designated groups in the employer's workforce and the employer's strategy for achieving those goals; and
- (f) provides for any other matter that may be prescribed.

(2) In establishing the short term numerical goals referred to in paragraph (1)(d), every employer shall consider

- (a) the degree of under-representation of persons in each designated group in each occupational group within the employer's workforce;
- (b) the availability of qualified persons in designated groups within the employer's workforce and in the Canadian workforce;

- (c) timetables
- (d) numerical goals are to be established for each occupational category in which under-representation has been identified. Measures should be taken in each year to achieve these goals. Numerical goals are only required if there is under-representation in the occupational group in question. Short-term goals must relate to a period of from one to three years (see subsection (3)). Note: numerical goals related to retention are not required, since many factors involved in an employee's decision to stay or leave are not related to employment equity and are outside an employer's control.
- (e) longer term goals (i.e. more than three years) and strategy. These goals need not be numerical. The intention is to require employers to step back and consider the larger picture, beyond immediate operational constraints. Even if, part way through or at the end of a specific plan, progress in addressing under-representation turns out not to have been possible in the short term (e.g. because of downsizing or current collective agreements provisions), the employer can demonstrate good faith and the willingness to address past imbalances over time, by setting appropriate strategic long-term goals. These goals could therefore be an important element in a compliance officer's decision whether or not to find the employer in non-compliance at a particular point in time.

This important sub-section sets out factors to be considered both by employers and compliance officers in setting and assessing numerical goals. No direction by a compliance officer or order by a Tribunal can fail to take into account these factors. (See Section 33(1)(f).) However, this section does not prescribe how the goals will be set.

Sub-sections (a) and (b) contain the usual «stock» indicators, whereas (c) and (d) contained the anticipated «flow» ones.

- (c) the anticipated growth or reduction of the employer's workforce during the period in respect of which the numerical goals apply;
- (d) the anticipated turnover of employees within the employer's workforce during the period in respect of which the numerical goals apply; and
- (e) any other factor that may be prescribed.

(3) In this section, "short term" means a period of not less than one year and not more than three years, and "longer term" means a period of more than three years.

11. Every employer shall ensure that its employment equity plan would, if implemented, constitute reasonable progress toward implementing employment equity as required by this Act.

12. Every employer shall

- (a) Make all reasonable efforts to implement its employment equity plan; and
- (b) monitor implementation of its plan on a regular basis to assess whether reasonable progress toward implementing employment equity is being made.

13. Every employer shall, at least once during the period in respect of which the short term numerical goals referred to in paragraph 10(1)(d) are established, review its employment equity plan and revise it by

- (a) updating the numerical goals, taking into account the factors referred to in subsection 10(2); and
- (b) making any other changes that are necessary as a result of an assessment made pursuant to paragraph 12(b) or as a result of changing circumstances.

14. Every employer shall provide information to its employees explaining the purpose of employment equity and shall keep its employees informed about measures the employer has undertaken or is planning to undertake to implement employment equity and the progress the employer has made in implementing employment equity.

Short-term goals are more realistic if the business cycle is considered. This doesn't proscribe a rate, but requires that relative factors be considered.

Employers can pick the timeframe appropriate for their business and planning cycle. As a general rule, it is expected that plans will be annual, but flexibility is allowed.

This section sets the standard against which the employer's plan can be judged, i.e. if implemented, it would constitute «reasonable progress». Reasonable progress will be defined over time in the context of compliance orders and case law. «If implemented» does not mean that the employer has a choice; it simply reflects the reality that some goals in the plan may not be met for reasons outside the employer's control.

It is not enough to have a plan. An employer is obliged to make reasonable efforts to implement it, as well as to monitor implementation. Once again, the frequency of monitoring is left to the employer's discretion, based on their usual practice.

Periodic revision and updating of the plan and numerical goals are required.

Transparency

15. (1) Every employer shall consult with its employees' representatives by inviting the representatives to provide their views concerning

(a) the assistance that the representatives could provide to the employer to facilitate the implementation of employment equity in its workplace and the communication to its employees of matters relating to employment equity; and

There are no prescriptions as to how the consultations will occur.

Sub-section (a) sets the overall tone or environment for the consultation process (i.e. it is probably outside the normal collective bargaining process, and focuses on facilitation and communication). Final responsibility for development of the plan itself lies with the employer (i.e. the employer can choose to incorporate the representatives' input or not), but the representatives must still provide advice «to facilitate the implementation» of the plan.

(b) the preparation, implementation and revision of the employer's employment equity plan.

Sub-section (b) defines the subject matter of the consultations (i.e. the minimum requirement).

(2) Where employees are represented by a bargaining agent, the bargaining agent shall participate in a consultation under subsection (1).

The bargaining agent **shall** (i.e. must) participate. The compliance officer review this element of the consultation process during the audit, but directives can only be issued to the employer, so it would not be possible to enforce these sections.

(3) Every employer and its employees' representatives shall collaborate in the preparation, implementation and revision of the employer's employment equity plan.

Sub-section (4) clarifies that all final decision-making continues to reside with the employer.

16.(1) A person who becomes an employer after the day on which this section comes into force shall, within eighteen months after becoming an employer, comply with sections 9 and 10.

New employers have eighteen months to do the workforce analysis, employment systems review, and prepare a plan.

(2) The Commission may not conduct a compliance audit of the discharge of the obligations of a person referred to in subsection (1) within two years after the day on which that person becomes an employer.

The CHRC cannot audit a new entity for two years.

### Records and Reports

17.Every employer shall, in accordance with the regulations, establish and maintain employment equity records in respect of the employer's workforce, the employer's employment equity plan and the implementation of employment equity by the employer.

The records an employer must establish and maintain are prescribed by regulation.

18.(1) Every private sector employer shall, on or before June 1 in each year, file with the Minister a report in respect of the immediately preceding calendar year containing information in accor-

Five months following the end of each calendar year private sector employers. Currently, employers report the distribution of their workforce across occupational groupings and salary ranges nationally,

dance with prescribed instructions, indicating, in the prescribed manner and form,

and for each province or designated CMA (Calgary, Edmonton, Halifax, Montreal, Regina, Toronto, Vancouver, and Winnipeg) where there are 100 or more employees. Reports for each geographical area are also provided for hirings, promotions, and terminations.

Form 1

- (a) The industrial sector in which its employees are employed, the location of the employer and its employees, the number of its employees and the number of those employees who are members of designated groups;
  - (b) the occupational groups in which its employees are employed and the degree of representation of persons who are members of designated groups in each occupational group;
  - (c) the salary ranges of its employees and the degree of representation of persons who are members of designated groups in each range and in each prescribed subdivision of the range; and
  - (d) the number of its employees hired, promoted and terminated and the degree of representation in those numbers of persons who are members of designated groups.
- (2) For the purposes of subsection (1), an employer is the person who or organization that was the employer on December 31 in the immediately preceding year.
- (3) An employer may file a report using electronic media in a manner specified in writing by the Minister and, in such a case, the report is deemed to have been filed on the day that the Minister acknowledges receipt of it.
- (4) Only those employees who identify themselves to their employer, or agree to be identified by their employer, as aboriginal peoples, members of visible minorities and persons with disabilities are to be counted as members of those designated groups for the purposes of the report.
- (5) A report shall be certified, in the prescribed manner, as to the accuracy of the information contained in it and shall be signed by the employer or, where the employer is a corporation, by a prescribed person on behalf of the corporation.

Re-emphasises Section 9(2) which prescribes that self-identification is the only mechanism by which an individual may be counted as being an Aboriginal person, a visible minority, and/or a person with disabilities.

- (6) An employer shall include in a report a description of
- (a) the measures taken by the employer during the reporting period to implement employment equity and the results achieved; and
- This provides a qualitative analysis of the employer's employment equity initiatives and of the degree to which consultations with employee representatives occurred. It may also include a narrative description to explain deviations from numerical goals (plant closures, take-overs, etc.).
- (b) the consultations between the employer and its employees' representatives during the reporting period concerning the implementation of employment equity.
- (7) Where, in the opinion of the Minister, associated or related federal works, undertakings or businesses are operated by two or more employers having common control or direction, the Minister may, on the application of the employers, authorize them to file a consolidated report with respect to employees employed by them on or in connection with those works, undertakings or businesses.
- (8) The Minister may, on the application of an employer, exempt the employer from any or all of the requirements of this section for a period not exceeding one year if, in the opinion of the Minister, special circumstances warrant the exemption.
- (9) An employer shall, on filing a report with the Minister under this section, provide its employees' representatives with a copy of the report.
- Transparency
- (10) The Minister shall, on receipt of a report, send a copy of it to the Commission.
- The CHRC analyse the report in arriving at a decision whether an audit is warranted.
- 19.(1) Subject to subsection (2), every report filed under subsection 18(1) shall be available for public inspection at such places as may be designated, and in such form as may be determined, by the Minister, and any person may, on payment of a prescribed fee, not to exceed the costs of furnishing a copy, obtain from the Minister a copy of any of the reports.
- This provides for the public dissemination of the workforce representation and allows for interest groups to gauge the effectiveness of employment equity with specific employers on an annual basis.
- (2) The Minister may, on the application of an employer, withhold the employer's report from public inspection for a period not exceeding one year if, in the opinion of the Minister, special circumstances warrant the withholding.
- If to make an employer's report public would put that employer in a position of competitive disadvantage, the report may be withheld. This has rarely occurred.

20. The Minister shall in each year prepare a report consisting of a consolidation of the reports filed under subsection 18(1) together with an analysis of those reports and shall cause the report to be laid before each House of Parliament not later than the fifteenth sitting day that that House of Parliament is sitting after the report is completed.

21.(1) The President of the Treasury Board shall, in each fiscal year, cause to be laid before each House of Parliament a report in respect of the state of employment equity in the portions of the public service referred to in paragraph 4(1)(b) during the immediately preceding fiscal year.

(2) The report referred to in subsection (1) shall consist of

(a) a consolidation and analysis of

(i) the number of employees employed in each portion of the public service referred to in paragraph 4(1)(b) and the number of persons who are members of each designated group so employed,

(ii) the total number of employees employed in all portions of the public service referred to in paragraph 4(1)(b) in each province and in the National Capital Region and the number of persons who are members of each designated group so employed,

(iii) the occupational groups of employees and the degree of representation of persons who are members of each designated group in each occupational group,

(iv) the salary ranges of employees and the degree of representation of persons who are members of each designated group in each range and in any subdivision of the range, and

(v) the numbers of employees hired, promoted and terminated and the degree of representation, in those numbers, of persons who are members of each designated group;

(b) a description of the principal measures taken by the Treasury Board during the reporting period to implement employment equity and the results achieved;

Each year since the first employer reports were received in 1988, the Minister has tabled a consolidated annual report.

Responsibility for reporting for the federal Public Service rests with the President of the Treasury Board.

The required contents of Treasury Board's report are similar to the existing requirements under the *Financial Administration Act* [section 11(2.4)].

This describes a requirement with respect to geographic distribution.

(c) a description of the consultations between the Treasury Board and its employees' representatives during the reporting period concerning the implementation of employment equity; and

(d) any other information that the President of the Treasury Board considers relevant.

(3) Each portion of the public sector referred to in paragraphs 4(1)(c) and (d), other than the Canadian Security Intelligence Service, shall, within six months after the end of each fiscal year, provide to the President of the Treasury Board a report containing the information referred to in subsection (4) in relation to that portion during that fiscal year and the President shall cause the reports, together with the report referred to in subsection (1), to be laid before each House of Parliament.

(4) A report referred to in subsection (3) shall consist of

(a) the information referred to in subparagraphs (2)(a)(i) to (v) in relation to that portion;

(b) an analysis of the information referred to in paragraph (a); and

(c) the information referred to in paragraphs (2)(b) to (d) in relation to that portion.

(5) The Canadian Security Intelligence Service shall, within six months after the end of each fiscal year, provide to the President of the Treasury Board a report containing the information referred to in subsection (6) in relation to that portion during that fiscal year and the President shall cause the report, together with the report referred to in subsection (1), to be laid before each House of Parliament.

(6) A report referred to in subsection (5) shall consist of

(a) the percentage of employees employed in that portion who are members of each designated group;

(b) the occupational groups of employees in that portion and the percentage of persons who are members of each designated group in each occupational group;

Every «separate employer» prepares a report and submits it to the Treasury Board, which tables those reports from separate employers along with its own.

- (c) the salary ranges of employees in that portion and the percentage of persons who are members of each designated group in each range and in any subdivision of the range;
- (d) the percentage of employees hired, promoted and terminated in that portion who are members of each designated group;
- (e) an analysis of the information referred to in paragraphs (a) to (d); and
- (f) the information referred to in paragraphs (2)(b) to (d) in relation to that portion.

(7) The President of the Treasury Board shall, as soon as possible after a report referred to in any of subsections (1), (3) and (5) is laid before each House of Parliament, send a copy of the report to the Commission.

(8) As soon as possible after a report referred to in this section is laid before each House of Parliament,

- (a) in the case of a report referred to in subsection (1), the President of the Treasury Board,
- (b) in the case of a report referred to in subsection (3), each portion of the public sector referred to in that subsection, and
- (c) in the case of a report referred to in subsection (5), the Canadian Security Intelligence Service,

shall send a copy of the report to its employees' representatives.

## PART II

### COMPLIANCE

#### Compliance Audits

22.(1) The Commission is responsible for the enforcement of the obligations imposed on employers by sections 5, 9 to 15 and 17.

The Canadian Human Rights Commission enforces all employer obligations except reporting obligations. Enforcement of the latter is the responsibility of the Minister of Labour with respect to private sector employers and the President of the Treasury Board for the public service.

- (2) The Commission shall, in discharging its responsibility under subsection (1), be guided by the policy that, wherever possible, cases of noncompliance be resolved through persuasion and the negotiation of written undertakings pursuant to subsection 25(1) and that directions be issued under subsection 25(2) or (3) and applications for orders be made under subsection 27(2) only as a last resort.
- A non-adversarial approach, involving persuasion and negotiation wherever possible, is mandated by sub-section (2). The explicit reference to the preferred approach is intended to prevent litigiousness on the part of the Commission. This reflects the underlying principle that employment equity, unlike much anti-discrimination legislation, is not concerned with attributing blame or determining guilt. Rather, the purpose of the compliance audit is to verify and gain compliance with the *Employment Equity Act*.
- (3) The Commission may designate any person or category of persons as employment equity compliance review officers for the purposes of conducting compliance audits of employers.
- The Commission may use present staff or contract externally for compliance officers.
- (4) No person who has been designated as an investigator under section 43 of the *Canadian Human Rights Act* to investigate a complaint under that Act in respect of an employer may, during the investigation, conduct a compliance audit of that employer.
- As long as a human rights investigation of a particular employer under the CHRA is taking place, the staff member investigating that complaint cannot conduct a compliance audit of the employer involved. This is intended to prevent any perception of unfairness or bias on the part of the compliance officer.
- (5) The Commission may authorize any officer or employee of the Commission whom the Commission considers appropriate to exercise any power and perform any duty or function of the Commission under this Act and any power so exercised and any duty or function so performed shall be deemed to have been exercised or performed by the Commission.
- 23.(1) For the purposes of ensuring compliance with the provisions referred to in subsection 22(1), a compliance officer may conduct a compliance audit of an employer and, for that purpose, may
- The powers set out here are intended to enable a compliance officer to undertake an effective audit.
- (a) at any reasonable time, enter any place in which the officer believes on reasonable grounds there is any thing relevant to the enforcement of any of those provisions; and
- (b) require any person to produce for examination or copying any record, book of account or other document that the officer believes on reasonable grounds contains information that is relevant to the enforcement of any of those provisions.

(2) In conducting a compliance audit, a compliance officer may

- (a) reproduce or cause to be reproduced any record from a data processing system in the form of a printout or other intelligible output and remove the printout or other output for examination and copying; and
- (b) use or cause to be used any copying equipment at the place to make copies of any record, book of account or other document.

(3) Compliance officers shall be furnished with certificates in a form established by the Commission certifying their designation as compliance officers and, on entering a place under paragraph (1)(a), a compliance officer shall show the certificate to the person in charge of the place if the person requests proof of the officer's designation.

(4) The person in charge of a place entered pursuant to paragraph (1)(a) and every person found in the place shall

- (a) give the compliance officer all reasonable assistance to enable the officer to exercise the powers conferred on compliance officers by this section; and
- (b) provide the officer with any information relevant to the enforcement of this Act that the officer may reasonably require.

24. Every compliance officer or any other person acting on behalf of or under the direction of the Commission who receives or obtains information relating to a compliance audit under this Act shall, with respect to access to and use of that information by that compliance officer or person, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.

This is to ensure that the employer's records are dealt with solely for the purpose of employment equity and will not be used to affect operations or competitive advantage.

25. (1) Where a compliance officer is of the opinion that an employer

This important section lists the potential areas of non-compliance by an employer; that is, it defines non-compliance and is therefore the foundation for compliance and enforcement activity. Any shortcomings in these areas trigger the power of the compliance officer to initiate efforts to ensure compliance, beginning with negotiating an acceptable undertaking (e.g. a letter of understanding or memorandum of understanding between the employer and the CHRC).

- (a) not collected information or conducted an analysis referred to in paragraph 9(1)(a) or conducted a review referred to in paragraph 9(1)(b),

- (b) has not prepared an employment equity plan referred to in section 10,

- (c) has prepared an employment equity plan that does not meet the requirements of sections 10 and 11,
- (d) not made all reasonable efforts to implement its employment equity plan in accordance with section 12,
- (e) failed to review and revise its employment equity plan in accordance with section 13,
- (f) has failed to provide information to its employees in accordance with section 14,
- (g) has failed to consult with its employees' representatives in accordance with section 15, or
- (h) has failed to establish and maintain employment equity records as required by section 17,

The compliance officer shall inform the employer of the noncompliance and shall attempt to negotiate a written undertaking from the employer to take specified measures to remedy the noncompliance.

(1.1) Where

- (a) an employer has been informed of a noncompliance by a compliance officer under subsection (1) and the finding of noncompliance is based, in whole or in part, on the apparent underrepresentation of aboriginal peoples, members of visible minorities or persons with disabilities in the employer's work force, as reflected in the employer's work force analysis conducted pursuant to paragraph 9(1)(a), and
- (b) the employer believes that the apparent underrepresentation is attributable to the decision of employees who may be members of the designated groups concerned not to identify themselves as such or not to agree to be identified by the employer as such under subsection 9(2),

If the employer believes his representation data for Aboriginal peoples, visible minorities, or persons with disabilities is based on their reluctance to self-identify, the employer may inform the compliance officer of this belief.

The employer may inform the compliance officer of such belief.

- (1.2) Where the employer satisfies the compliance officer that the finding of noncompliance is attributable, in whole or in part, to the reason described in paragraph (1.1)(b) and that the employer has made all reasonable efforts to implement employment equity, the compliance officer shall take the reason into account in exercising any powers under this section.

If the compliance officer is satisfied with the employer's case about the reluctance of these designated group members to self-identify, this should be reflected in the officer's actions.

(1.3) In satisfying the compliance officer under subsection (1.2) that the finding of noncompliance is attributable, in whole or in part, to the reason mentioned in paragraph (1.1)(b), the employer must do so by means other than the identification of individual employees in its work force that the employer believes are members of designated groups who have not identified themselves as such, or agreed to be identified by the employer as such, under subsection 9(2).

(2) Where a compliance officer fails to obtain a written undertaking that, in the opinion of the compliance officer, would be sufficient to remedy the noncompliance, the compliance officer shall notify the Commission of the noncompliance and the Commission may issue and send, by registered mail, a direction to the employer

(a) setting out the facts on which the officer's finding of noncompliance is based; and

(b) requiring the employer to take such actions as are specified in the direction to remedy the non-compliance.

(3) Where a compliance officer obtains a written undertaking and the compliance officer is of the opinion that the employer has breached the undertaking, the compliance officer shall notify the Commission of the noncompliance and the Commission may issue and send, by registered mail, a direction to the employer requiring the employer to take such actions as are specified in the direction to remedy the non-compliance.

(4) The Commission may rescind or amend a direction issued by the Commission pursuant to subsection (2) or (3) on the presentation of new facts or on being satisfied that the direction was issued without knowledge of, or was based on a mistake as to, a material fact.

26. (1) Where a compliance officer is of the opinion that an employer has failed to give reasonable assistance or to provide information as required by subsection 23(4), the compliance officer shall notify the Commission of the non-compliance and the Commission may issue and send, by registered mail, a direction to the employer

(a) setting out the facts on which the officer's finding of non-compliance is based; and

In making the employer's case with respect to reluctance to self-identify, it cannot be done by identifying individuals who the employer believes belongs to these designated groups. In other words, the employer cannot point a finger and say: «Look at Joe, obviously he is a .....».

Where no acceptable written undertaking is obtained, the compliance officer is not empowered to request the issuance of a direction from the Commission. Any such direction is limited by the requirements set out in section 33.

The compliance officer may also request a direction where the employer has not satisfied the requirements outlined in the written undertaking, previously negotiated.

There is flexibility to amend a direction, once made.

A direction may be issued.

- (b) requiring the employer to take such actions as are specified in the direction to remedy the non-compliance.
- (2) The Commission may rescind or amend a direction issued pursuant to subsection (1) on the presentation of new facts or on being satisfied that the direction was issued without knowledge of, or was based on a mistake as to, a material fact.

#### Requests for Review or Order

27. (1) An employer to whom a direction is issued pursuant to subsection 25(2) or (3) or 26(1) may make a request to the Chairperson for a review of the direction

- (a) in the case of a direction issued pursuant to subsection 25(2) or (3), within sixty days after the day on which it is issued; and
- (b) in the case of a direction issued pursuant to subsection 26(1), within thirty days after the day on which it is issued.

(2) Where the Commission is of the opinion that an employer has failed to comply with a direction issued by the Commission, the Commission may apply to the Chairperson for an order confirming the direction.

(3) No application may be made pursuant to subsection (2) where the employer has requested a review in accordance with subsection (1).

1995, c. 44, s. 27; 1998, c. 9, s. 38.

An employer who disputes the Commission's direction may request a review by a Tribunal. Requests are made to the Chairperson of the Canadian Human Rights Tribunal, constituted under the CHRA (see definitions in Section 3).

If the employer does not take the corrective measures outlined in the direction, the Commission may apply to have the direction confirmed by order of the Tribunal, after the 60-day limit has expired. Once confirmed, the order may be made an order of the Federal Court, and enforced as such (see Section 31(1)).

The employer will always have sixty days in which to request a review of direction. Only if such review is not requested can the Commission apply for an order. It is important to note that the only parties who may request a Tribunal hearing are the employer and the Commission. There is no provision for unions, employees, or other persons to request a hearing. In other words, there is no mechanism under this Act for hearing complaints. Complaints of discrimination will continue to be dealt with under the *Canadian Human Rights Act*. Also, it is anticipated that recourse to Tribunals will be had sparingly, as a last resort, after all the preliminary steps have been taken (i.e. the attempt to negotiate a written undertaking has failed or the employer has not complied with it or a direction).

## **Employment Equity Review Tribunals**

28.(1) If an employer makes a request under subsection 27(1) or the Commission makes an application under subsection 27(2), the Chairperson shall establish an Employment Equity Review Tribunal to consider the request or application.

A Tribunal is appointed by the Chairperson of the Canadian Human Rights Tribunal (constituted under the CHRA), at the request of either the Commission or the employer.

(2) The Chairperson shall appoint a Tribunal consisting of one member of the Canadian Human Rights Tribunal, but the Chairperson may appoint a Tribunal of three members if the Chairperson considers that the complexity or precedential significance of the request or application requires a Tribunal of three members.

A Tribunal consists of one or three members, at the discretion of the Chairperson. A three-person Tribunal may be appointed to hear complex or difficult cases. (Under the CHRA, there is no appeal from the decision of a three-person Tribunal.)

(3) The Chairperson shall, in appointing members of the Tribunal, take into consideration their knowledge and experience in employment equity matters.

Sub-sections 3 through 7: Details relating to the operation of the Tribunal – agreement of a chair, remuneration, travel and living expenses of Tribunal members, authority to engage technical experts.

(4) If a Tribunal consists of more than one member, the Chairperson shall designate one of the members to preside over the hearings of the Tribunal.

(4.1) A member whose appointment expires may, with the approval of the Chairperson, conclude any hearing that the member has begun, and a person performing duties under this section is deemed to be a part-time member for the purposes of section 48.3 of the *Canadian Human Rights Act*.

(5) The members of a Tribunal shall be paid such remuneration as may be provided for under subsection 48.6(1) of the *Canadian Human Rights Act*.

(6) Members are entitled to be paid travel and living expenses incurred in carrying out duties as members of the Tribunal while absent from their ordinary place of residence that may be provided for under subsection 48.6(2) of the *Canadian Human Rights Act*.

(7) The Chairperson may engage and, subject to the approval of the Treasury Board, fix the remuneration of persons having technical or special knowledge to assist or advise a Tribunal in any matter.

(8) In performing its duties and functions, a Tribunal shall, where available, make use of the services and facilities of departments, boards and agencies of the Government of Canada.

The intent here is to economise by not setting up a new office unnecessarily and hiring new staff. Note the use of the phrase «where applicable» to indicate the Tribunal does not have an absolute right to use existing government facilities and services.

(9) The Chairperson may make rules governing the practice and procedure of Tribunals.

(10) Every member or other person acting on behalf of or under the direction of a Tribunal who receives or obtains information relating to a request or application referred to in subsection (1) shall, with respect to access to and use of that information by that member or other person, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.

1995, c. 44, s. 28; 1998, c. 9, s. 39.

29.(1) A Tribunal may

(a) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral and written evidence on oath and to produce such documents and things as the Tribunal considers necessary for a full review;

(b) administer oaths; and

(c) receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Tribunal sees fit, whether or not that evidence or information would be admissible in a court of law.

Court-like powers are given to the Tribunal: to subpoena persons and documents; swear in witnesses; and accept evidence whether in person under oath, in a sworn statement (affidavit), or otherwise.

(2) A Tribunal shall conduct any matter that comes before it as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

The Tribunal is not bound to observe the strict rules of evidence that must be followed in court.

(3) Subject to subsection (4), a hearing before a Tribunal shall be conducted in public.

Informal and speedy hearings are intended, unlike formal and often protracted court proceedings.

(4) A hearing before a Tribunal may, on the request of an employer, be held *in camera* if the employer establishes to the satisfaction of the Tribunal that the circumstances of the case so require.

«In camera» hearings are closed to the public, press, etc. These are permitted only upon the request of the employer, who must however first convince the Tribunal of the need.

(5) A Tribunal shall provide the parties to a proceeding before the Tribunal with written reasons for its decision.

(6) A Tribunal shall, on request by any person, provide the person with a copy of any decision of the Tribunal, including a decision under subsection (4) to hold a hearing *in camera*, together with the written reasons for the decision.

30.(1) A Tribunal may, after hearing a request made under subsection 27(1) or an application made under subsection 27(2),

(a) by order, confirm, vary or rescind the Commission's direction; and

(b) make any other order it considers appropriate and reasonable in the circumstances to remedy the non-compliance.

(2) A Tribunal may vary or rescind any order made by it.

(3) An order of a Tribunal is final and, except for judicial review under the *Federal Court Act*, is not subject to appeal or review by any court.

31.(1) Any order of a Tribunal made under section 30 may, for the purposes of its enforcement, be made an order of the Federal Court and is enforceable in the same manner as an order of that Court.

(2) To make an order of a Tribunal an order of the Federal Court, the usual practice and procedure of the Court may be followed or a certified copy of the order may be filed with the registrar of the Court, and from the time of filing the order becomes an order of the Court.

32. The Commission shall include in its annual report referred to in section 61 of the *Canadian Human Rights Act* a report of its activities, including an assessment of their effectiveness, under this Act during the year.

#### Limitations Respecting Directions and Orders

33.(1) The Commission may not give a direction under section 25 or 26 and no Tribunal may make an order under section 30 where that direction or order would

(a) cause undue hardship on an employer;

(b) require an employer to hire or promote unqualified persons;

The Tribunal has broad powers to make orders. Subject to the limitations on orders and directions (section 33), it can confirm, rescind, vary, or revoke the compliance officer's direction, and it may also make an order to remedy the non-compliance. The order must be to remedy non-compliance, however; there is no power to fine or impose monetary penalties.

A Tribunal may reconsider an order it has made. This is not the usual situation in court proceedings, where the same court that issued them does not reconsider orders. However, these Tribunal proceedings are intended to be flexible and informal. If an error was made, the Tribunal may correct it.

There is no appeal from an order of the Tribunal. This is different from the procedure under the CHRA, where an appeal is possible from the decision of a one-member Tribunal (but not of a three-member Tribunal). Judicial review is always available if some unfairness or impropriety is alleged. However, this procedure is not an appeal.

Orders of the Tribunal may be registered and made orders of the Federal Court. Failure to obey such an order therefore could result in being cited for contempt of court. Imprisonment or a fine is the penalty for contempt of court.

The Commission is required to report on its activities under this Act, and to assess the effectiveness of those activities.

Sections (1) and (2): Despite the broad powers of the Tribunal to make orders, and the broad power of the Commission to issue directions, certain restrictions apply in both situations, to prevent the issuing of «bad» orders/directions. These echo the elements of section 6, clarifying what employment equity is not. Such orders or directions may not cause undue hardship, require an employer to hire or promote unqualified persons or to ignore the merit principle (in the case of a public sector employer), or require

- (c) with respect to the public sector, require an employer to hire or promote persons without basing the hiring or promotion on selection according to merit in cases where the *Public Service Employment Act* requires that hiring or promotion be based on selection according to merit, or impose on the Public Service Commission an obligation to exercise its discretion regarding exclusion orders or regulations;
- (d) require an employer to create new positions in its workforce;
- (e) impose a quota on an employer; or
- (f) in the case of a direction or order respecting the establishment of short term numerical goals, fail to take into account the factors set out in subsection 10(2).
- (2) In paragraph (1)(e), "quota" means a requirement to hire or promote a fixed and arbitrary number of persons during a given period.
- (3) In making a direction or order that applies to the public sector, the Commission, in the case of a direction, and a Tribunal, in the case of an order, shall take into account the respective roles and responsibilities of
- (a) the Public Service Commission and the Treasury Board under the *Public Service Employment Act* and the *Financial Administration Act*; or
- (b) a portion of the public sector referred to in paragraph 4(1)(c) or (d) under any other Act of Parliament.
- Privileged Information**
- 34.(1) Information obtained by the Commission under this Act is privileged and shall not knowingly be, or be permitted to be, communicated, disclosed or made available without the written consent of the person from whom it was obtained.
- an employer to create new positions in the workforce.
- The compliance officer and Tribunal cannot impose a quota. The term «quota» is defined in sub-section (2) as a fixed or arbitrary number of hires or promotions in a given time period. However, the Tribunal *can* order the employer to establish numerical goals. For example, an order to hire Aboriginal peoples as the rate of one in ten (or 10% of opportunities as they arise) is acceptable, but an order to hire ten by year-end is not. Therefore, an order as in Action Travail des Femmes (ATF) is allowable under this Act. No order respecting goals and timetables can fail to consider the factors set out in section 10(2).
- The definition gives «quotas» a precise meaning in an employment equity context.
- Orders against Treasury Board or the Public Service Commission or a separate employer can only order those entities to do what is in their power to do, under the *Financial Administration Act* (in the case of Treasury Board) or the *Public Service Employment Act* (in the case of the Public Service Commission).
- Privacy of employers is protected. The Commission cannot communicate information obtained under this Act without the consent of the employer.

- (2) No member of the Commission or person employed by it who obtains information that is privileged under subsection (1) shall be required, in connection with any legal proceedings, other than proceedings relating to the administration or enforcement of this Act, to give evidence relating to that information or to produce any statement or other writing containing that information.
- (3) Information that is privileged under subsection (1) may, on any terms and conditions that the Commission considers appropriate, be communicated or disclosed to a minister of the Crown in right of Canada or to any officer or employee of Her Majesty in right of Canada for any purpose relating to the administration or enforcement of this Act.
- (4) Nothing in this section prohibits the communication or disclosure of information for the purposes of legal proceedings relating to the administration or enforcement of this Act.
- (5) No information obtained by the Commission or a Tribunal under this Act may be used in any proceedings under any other Act without the consent of the employer concerned.

Because the information is privileged, compliance officers cannot be required to testify about it other than in proceedings under this Act itself. For instance, they could not be required to provide it in testimony before a Human Rights Tribunal, during a hearing for a human rights complaint under the CHRA.

This section permits the Commission to make a report to the Minister when a compliance audit reveals that the employer has filed false or misleading information (section 32(1)(c)). At that point the Minister may impose a monetary penalty.

Clarifies that information may be provided for the purpose of administering and enforcing the Act.

Information obtained by the Commission under the Act cannot be used in any other proceeding without the employer's consent. In other words, the CHRC cannot use any information obtained under the EEA (i.e. during a compliance audit) to generate or support a human rights complaint under the CHRA. This is required by principles of fairness.

### PART III

#### ASSESSMENT OF MONETARY PENALTIES

##### Violations

- 35.(1) Every private sector employer commits a violation of this Act who
- (a) without reasonable excuse, fails to file an employment equity report as required by section 18;
- (b) without reasonable excuse, fails to include in the employment equity report any information that is required, by section 18 and the regulations, to be included; or
- (c) provides any information in the employment equity report that the employer knows to be false or misleading.

There are, for private sector employers only, a system of administrative fines for three specific reporting violations:

- (a) failure to report as required;  
(b) failure to include required information; and  
(c) knowingly filing a report containing false or misleading information.

(2) A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

This section clarifies what constitutes a continuing or repeated violation. A continuing violation would occur under section 35(1)(a) where an employer files a late report. Each day it is late would constitute a separate violation.

(3) A violation is not an offence and accordingly the *Criminal Code* does not apply in respect of a violation.

36. (1) The Minister may, within two years after the day on which the Minister becomes aware of a violation, issue a notice of assessment of a monetary penalty in respect of the violation and send it by registered mail to the private sector employer.

(2) The amount of a monetary penalty shall not exceed

(a) \$10,000 for a single violation; and

(b) \$50,000 for repeated or continued violations.

(3) In assessing the amount of a monetary penalty, the Minister shall take into account

(a) the nature, circumstances, extent and gravity of the violation; and  
(b) the wilfulness or intent of the private sector employer and the employer's history of prior violations.

37. A notice of the assessment of a monetary penalty shall

(a) identify the alleged violation;  
(b) specify the amount of the monetary penalty; and  
(c) specify the place where the employer may pay the monetary penalty.

Two-year limitation period. The Minister sends an assessment to the employer by registered mail.

Amount of fines. A late report could theoretically give rise to a \$50,000 fine as a continuing violation.

Criteria to be used by the Minister in determining the amount of the fine.

Contents of the notice of assessment of monetary penalty.

### Options

38. (1) An employer may, not later than thirty days after receiving a notice of assessment of a monetary penalty,

An employer must either pay the assessment within 30 days, or request a Tribunal hearing to contest it within that time.

(a) comply with the notice; or

(b) contest the assessment of the monetary penalty by making a written application to the Minister for a review, by a Tribunal, of that assessment.

- (2) Where the Minister receives a written application, the Minister shall send a copy of the application to the Chairperson.
- The employer sends the application for a Tribunal to the Minister, who then sends a copy to the Chairperson, so that a Tribunal may be appointed.
- (3) If an employer who is issued a notice of assessment of a monetary penalty fails to exercise one of the options set out in subsection (1) within the period referred to in that subsection, the Minister shall send a copy of the notice of assessment to the Chairperson.
- If an employer fails to pay the fine or to contest it, then the Minister can request a Tribunal be appointed to order payment.
- 1995, c. 44, s. 38; 1998, c. 9, s. 40.
- 39.(1) On receipt of a copy of a written application or a copy of a notice of assessment, the Chairperson shall establish a Tribunal consisting of one member selected from the Canadian Human Rights Tribunal to review the assessment and shall
- The Chairperson appoints a Tribunal of one person, and the parties are informed of the time and place of the hearing.
- (a) send, by registered mail, a request that the employer appear before the Tribunal at the time and place set out in the request to hear the allegations against the employer in respect of the alleged violation; and
- (b) in writing, advise the Minister who issued the notice of assessment of the time and place set out in the request.
- (2) Where an employer to whom a request is sent fails to appear before a Tribunal at the time and place set out in the request, the Tribunal shall consider all the information that is presented to it by the Minister in relation to the alleged violation.
- If the employer fails to appear, the Tribunal may proceed in its absence, and hear the Minister's evidence.
- (3) In conducting its review, a Tribunal shall provide the Minister and the employer with a full opportunity consistent with procedural fairness and natural justice to present evidence and make representations to it with respect to the alleged violation.
- Requirements for a full and fair hearing.
- (4) Where at the conclusion of its proceedings a Tribunal determines that the employer
- The Tribunal's decision: either the employer is exonerated; or a Certificate is issued to the Minister, setting out the amount of the fine. The Certificate is an order of the Tribunal.
- (a) has not committed the alleged violation, the Tribunal shall immediately inform the employer and the Minister of its determination and no further proceedings shall be taken against the employer in respect of the alleged violation; or

- (b) has committed the alleged violation, the Tribunal shall immediately
- (i) issue to the Minister a certificate, in the prescribed form, of its determination that sets out an amount, not exceeding the applicable amount set out in subsection 36(2), determined by the Tribunal to be payable by the employer in respect of the violation, and
- (ii) send a copy of the certificate to the employer by registered mail.
- (5) In determining an amount under subparagraph (4)(b)(i), a Tribunal shall take into account the factors set out in subsection 36(3).
- (6) In proceedings under this section, the Minister has the burden of proving, on a balance of probabilities, that an employer has committed the alleged violation.
- (7) A certificate that purports to have been issued by a Tribunal under subparagraph (4)(b)(i) is evidence of the facts stated in the certificate, without proof of the signature or official character of the person appearing to have signed the certificate.
- (8) A determination of a Tribunal under this section is final and, except for judicial review under the *Federal Court Act*, is not subject to appeal or review by any court.

The Tribunal has to consider the same factors as the Minister in setting the fine.

Burden and quantum of proof (a legal and procedural issue).

An evidentiary fine point. The certificate is admissible as evidence in court without proving the signature.

No appeal from a Tribunal decision. A judicial review in Federal Court relates only to fundamental unfairness in the process, not to the decision itself.

1995, c. 44, art. 39; 1998, c. 9, s. 41.

#### **Enforcement of Monetary Penalties**

- 40.(1) A certificate issued under subparagraph 39(4)(b)(i) may be registered in the Federal Court and when registered has the same force and effect, and all proceedings may be taken on the certificate, as if the certificate were a judgment in that Court obtained by Her Majesty in right of Canada against the employer named in the certificate for a debt in the amount set out in the certificate.
- (2) All reasonable costs and charges associated with registration of the certificate are recoverable in like manner as if they were part of the amount determined by the Tribunal under subparagraph 39(4)(b)(i).

The certificate can be registered in Federal Court, and enforced as an order of that court.

Costs of registration become part of the amount due.

## PART IV

### GENERAL

41. (1) The Governor in Council may make regulations

(a) defining, for the purposes of the Act, the expressions "employee", "hired", "occupational group", "promoted", "salary" and "terminated";

(b) prescribing the manner of calculating the number of employees employed by an employer for the purpose of determining when an employer is considered to employ one hundred or more employees;

(c) governing the collection of information and the conduct of analyses referred to in paragraph 9(1)(a) and the conduct of reviews referred to in paragraph 9(1)(b);

(d) governing the establishment and maintenance of employment equity records referred to in section 17;

(e) prescribing anything that is to be prescribed by this Act; and

(f) generally, for carrying out the purposes and provisions of this Act.

(2) A regulation made pursuant to subsection (1) may be of general application or may apply to a particular employer or group of employers.

(3) No regulation may be made under subsection (1) that applies to the public sector without prior consultation with the Treasury Board.

(4) No expression defined pursuant to paragraph (1)(a) that applies to the public sector shall be given a meaning that is inconsistent with the meaning that that expression or any similar expression is given under the *Public Service Employment Act*.

Employees are counted at the point of peak employment during the year.

Workforce survey, workforce analysis, and employment systems review.

Records maintenance.

Important matters not listed here, which may be prescribed by regulation, include sections 10(1) and 10(2) (plan, goals and timetables); section 17 (report); and lesser matters [e.g. form of certificate (section 39(4)(b)(I))].

General power.

For example, regulations may be made which apply only to Treasury Board as employer, so as to accommodate the special characteristics of the public service.

Approval of Treasury Board is required for any regulations, which affect the public sector.

Consistency of meanings for the public sector, so that, for example, the term «hired» used under the PSEA cannot mean something different under this Act.

- (5) The Governor in Council may, taking into account the operational effectiveness of the appropriate portion of the public sector referred to in paragraph (a) or (b), make any regulation that the Governor in Council considers necessary to adapt this Act or the regulations or any provision of this Act or the regulations to accommodate
- (a) the Canadian Security Intelligence Service; or
- (b) where an order is made under paragraph 4(1)(d) in relation to the Canadian Forces or the Royal Canadian Mounted Police, the Canadian Forces or the Royal Canadian Mounted Police.
- (6) A regulation made under subsection (5) shall be made on the recommendation of the Treasury Board after consultation with
- (a) in the case of a regulation respecting the Canadian Security Intelligence Service, or the Royal Canadian Mounted Police, the Solicitor General; and
- (b) in the case of a regulation respecting the Canadian Forces, the Minister of National Defence.
- (7) The effect of a regulation made under subsection (5) with respect to any matter may differ from the effect of the Act or the regulations or of any provision of the Act or the regulations with respect to that matter.

**42. (1) The Minister is responsible for**

- (a) developing and conducting information programs to foster public understanding of this Act and to foster public recognition of the purpose of this Act;
- (b) undertaking research related to the purpose of this Act;
- (c) promoting, by any means that the Minister considers appropriate, the purpose of this Act;
- (d) Publishing and disseminating information, issuing guidelines and providing advice to private sector employers and employee representatives regarding the implementation of employment equity; and

This section sets out the Minister's responsibilities:

- (a) information programs for the public,
- (b) research,
- (c) promoting the purpose of the Act,
- (d) publishing information, issuing guidelines, providing advice to employers and employee representatives, and
- (e) award program (such as the Merit Awards).

Special regulations may be made for the Canadian Forces, CSIS, the RCMP and Communications Security Establishment (once covered) to adapt this Act to those organisations, taking into account «operational effectiveness». The scope is broad to make any changes to the Act or any section of the Act or regulations. These regulations are to be made on the recommendation of Treasury Board after consultation with the Minister of National Defence or the Solicitor General, as the case may be.

(e) developing and conducting programs to recognize private sector employers for outstanding achievement in implementing employment equity.

(2) The Minister is responsible for the administration of the Federal Contractors Program for Employment Equity and shall, in discharging that responsibility, ensure that the requirements of that Program with respect to the implementation of employment equity by contractors to whom the Program applies are equivalent to the requirements with respect to the implementation of employment equity by an employer under this Act.

(3) The Minister shall make available to employers any relevant labour market information that the Minister has respecting designated groups in the Canadian workforce in order to assist employers in fulfilling their obligations under this Act.

43. The Minister may authorize those persons employed in the public service of Canada whom the Minister considers to be appropriate to exercise any of the powers and perform any of the duties and functions that may be or are required to be exercised or performed by the Minister under this Act or the regulations, and any power exercised or duty or function performed by any person so authorized shall be deemed to have been exercised or performed by the Minister.

44. (1) Five years after the coming into force of this Act, and at the end of every five year period thereafter, a comprehensive review of the provisions and operation of this Act including the effect of those provisions shall be undertaken by such committee of the House of Commons as may be designated or established by the House for that purpose.

(2) A committee shall, within six months after the completion of a review referred to in subsection (1), submit a report on its review to the House of Commons including a statement of any changes the committee would recommend.

#### TRANSITIONAL PROVISION

45. The Treasury Board, the Public Service Commission and any person who is an employer to whom the *Employment Equity Act*, R.S., c. 23 (2nd Supp.), applied shall, within one year after the coming into force of this section, comply with sections 9 and 10 of this Act.

This section confirms the Minister's responsibility for the Federal Contractor's program, and for ensuring that the program reflects the principles of the Act. Provincially regulated employers cannot be subject to federal legislation and so cannot be covered by this Act per se.

Statistical data to be provided to employers.

The Minister may delegate to other public servants, i.e. departmental officials.

The requirement for a review of the Act by a committee of the House of Commons every five years.

The committee has six months after the review to table its report and recommendations.

## **CONSEQUENTIAL AMENDMENTS**

### *Broadcasting Act*

46. Section 5 of the *Broadcasting Act* is amended by adding the following after subsection (3):

(4) Where a broadcasting undertaking is subject to the *Employment Equity Act*, the powers granted to the Commission under this Act do not extend to the regulation or supervision of matters concerning employment equity in relation to that broadcasting undertaking.

### *Canadian Human Rights Act*

47. Section 40 of the *Canadian Human Rights Act* is amended by adding the following after subsection (3):

(3.1) No complaint may be initiated under subsection (3) as a result of information obtained by the Commission in the course of the administration of the *Employment Equity Act*.

The Act is amended by adding the following after section 40:

40.1 (1) In this section,

«designated groups» has the meaning assigned in section 3 of the *Employment Equity Act*;

«employer» means a person who or organization that discharges the obligations of an employer under the *Employment Equity Act*.

(2) No complaint may be dealt with by the Commission pursuant to section 40 where

(a) the complaint is made against an employer alleging that the employer has engaged in a discriminatory practice set out in section 7 or paragraph 10(a); and

(b) the complaint is based solely on statistical information that purports to show that members of one or more designated groups are underrepresented in the employer's workforce.

These were consequential amendments in a bill focusing on the CHRA. They change the tribunal structure to ensure it is consistent with the requirements of fairness. These amendments were challenged by Bell Canada in a pay equity case and upheld by the Federal Court of Appeal on May 24, 2001.

Section 40 of the CHRA was amended to prevent information obtained under the EEA from being used as the basis of a complaint by the Commission under the CHRA. See also section 41(5) of the EE Act.

This amendment of section 40.1 of the CHRA had the effect of stopping the practice of basing section 10 complaints (alleging that a group of individuals is being discriminated against) solely on statistical data. Section 10 complaints are still permitted under the CHRA. However, a specific discriminatory practice must be identified. Statistical data can be used as supporting evidence that a particular practice is discriminatory; but it cannot alone form the basis of the complaint.

49. Section 41 of the Act is renumbered as subsection 41(1) and is amended by adding the following:

(2) The Commission may decline to deal with a complaint referred to in paragraph 10(a) in respect of an employer where it is of the opinion that the matter has been adequately dealt with in the employer's employment equity plan prepared pursuant to section 10 of the *Employment Equity Act*.

(3) In this section, "employer" means a person who or organization that discharges the obligations of an employer under the *Employment Equity Act*.

50. The Act is amended by adding the following after section 54:

54.1 (1) In this section,

"designated groups" has the meaning assigned in section 3 of the *Employment Equity Act*; and

"employer" means a person who or organization that discharges the obligations of an employer under the *Employment Equity Act*.

(2) Where a Tribunal finds that a complaint against an employer is substantiated, it may not make an order pursuant to subparagraph 53(2)(a)(i) requiring the employer to adopt a special program, plan or arrangement containing

(a) positive policies and practices designed to ensure that members of designated groups achieve increased representation in the employer's workforce; or

(b) goals and timetables for achieving that increased representation.

(3) For greater certainty, subsection (2) shall not be construed as limiting the power of a Tribunal, under paragraph 53(2)(a), to make an order requiring an employer to cease or otherwise correct a discriminatory practice.

### *Financial Administration Act*

- 51.(1) Subsection 11(2) of the *Financial Administration Act* is amended by adding the following after paragraph (h):
- (h.1) subject to the *Employment Equity Act*, establish policies and programs with respect to the implementation of employment equity in the public service;
- (2) Subsections 11(2.1) to (3) of the Act are replaced by the following: Limitation of powers and functions of Board in relation to matters expressly determined
- (3) The powers and functions of the Treasury Board in relation to any of the matters specified in subsection (2) do not extend to any such matter that is expressly determined, fixed, provided for, regulated or established by any Act otherwise than by the conferring of powers or functions in relation thereto on any authority or person specified in that Act, and do not include or extend to any power or function specifically conferred on, or any process of personnel selection required or authorized to be employed by, the Public Service Commission by or under the authority of the *Public Service Employment Act*.

This links Treasury Board's powers for personnel management under the *Financial Administration Act* to its responsibilities under the *Employment Equity Act*.

Clarifies that Treasury Board's mandate is not to interfere with the Public Service Commission's mandate under the *Public Service Employment Act*.

### *Public Service Employment Act*

52. Subsection 5.1(5) of the *Public Service Employment Act* is replaced by the following:
- (5) In this section, "employment equity program" means a policy or program established by the Treasury Board with respect to the implementation of employment equity in the Public Service.
53. Subsection 47(1) of the Act is amended by striking out the word "and" at the end of paragraph (b), by adding the word "and" at the end of paragraph (c) and by adding the following:
- (d) the activities of the Commission during that year in relation to the implementation of employment equity programs, including its activities during that year in discharging its obligations under the *Employment Equity Act*.

Annual report requirements specifically refer to employment equity obligations.

## **REPEAL**

54. The *Employment Equity Act*, R.S., c. 23 (2nd Supp.), is repealed.

## **COMING INTO FORCE**

55. This Act or any provision of this Act comes into force on a day or days to be fixed by order of the Governor in Council.

\* [Note: Act in force October 24, 1996, *see SI/96-93.*]

## **RELATED PROVISIONS**

-- 1998, c. 9, s. 33:

- (1) In this section, "commencement day" means the day on which this section comes into force.
- (2) Subject to subsections (3), (4) and (5), the members of the Human Rights Tribunal Panel cease to hold office on the commencement day.
- (3) The members of any Human Rights Tribunal appointed under the *Canadian Human Rights Act* before the commencement day have jurisdiction with respect to any inquiry into the complaint in respect of which the Human Rights Tribunal was appointed.
- (4) The members of any Review Tribunal constituted under the *Canadian Human Rights Act* before the commencement day have jurisdiction with respect to any appeal against a decision or order of a Human Rights Tribunal.
- (5) The members of any Employment Equity Review Tribunal established under section 28 or 29 of the *Employment Equity Act* before the commencement day have jurisdiction over any matter in respect of which the Tribunal was established.
- (6) The Chairperson of the Canadian Human Rights Tribunal has supervision over and direction of the work of any Human Rights Tribunal, Review Tribunal or Employment Equity Review Tribunal referred to in subsection (3), (4) or (5).

- (7) Each member of a Human Rights Tribunal, Review Tribunal or Employment Equity Review Tribunal referred to in subsection (3), (4) or (5), other than such a member who is appointed as a full-time member of the Canadian Human Rights Tribunal, shall be paid such remuneration as may be fixed by the Governor in Council.
- (8) Each member of a Human Rights Tribunal, Review Tribunal or Employment Equity Review Tribunal referred to in subsection (3), (4) or (5) is entitled to be paid travel and living expenses must not exceed the maximum limits authorized by Treasury Board directive for employees of the Government of Canada.

## Appendix F: Data Highlights

### Women:

According to the 1996 Census, women represented almost 51% of the Canadian population. Their representation in the Canadian workforce increased slightly from 45.9% in 1991 to 46.4% in 1996.

### Aboriginal Peoples:

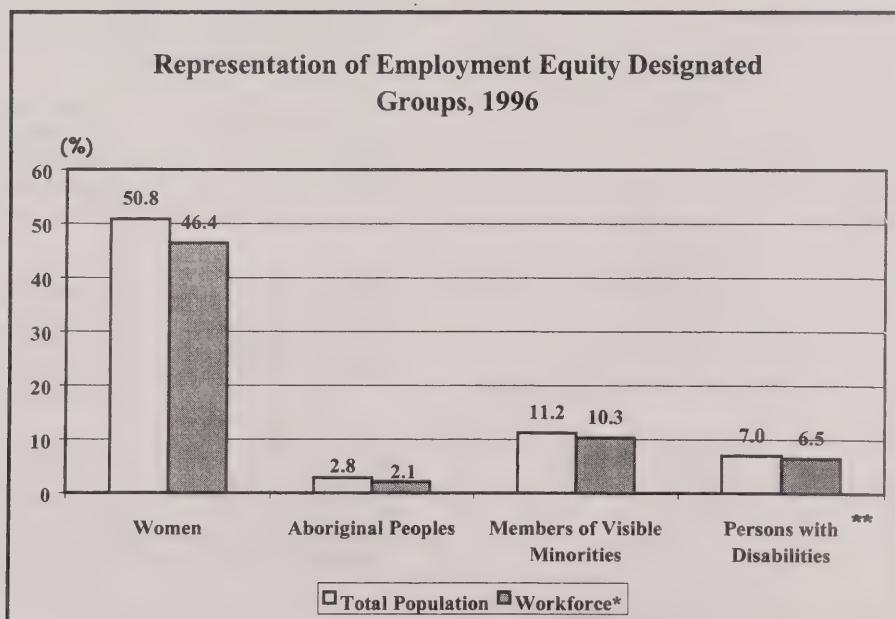
In 1996, Aboriginal peoples represented 2.8% of the population and 2.1% of the workforce.

### Members of Visible Minorities:

Members of visible minorities represented 11.2% of the population and 10.3% of the workforce in 1996.

### Persons with Disabilities:

There was no post-censal survey on persons with disabilities in 1996, due to lack of funding. The 1991 Health and Activity Limitations Survey (HALS) remains the most recent and comprehensive source of information on this designated group. Based on information collected in 1991, the representation of persons with disabilities, aged 15 to 64 years, as defined by the *Employment Equity Act*, was 7.0% of the Canadian population and 6.5% of its workforce.



- \* Workforce population for women, Aboriginal peoples and members of visible minorities is comprised of persons aged 15 and over who worked sometime in 1995 or 1996. The workforce population for Persons with Disabilities is comprised of persons aged 15 to 64 who worked anytime between 1986 and 1991.
- \*\* Based on 1991 HALS information on Persons with Disabilities (Limited at Work/Perception).

## **Highlights for Women**

### **Population ...**

- ❖ Women accounted for approximately 14.5 million or 51% of the total Canadian population according to the 1996 Census.
- ❖ The population distribution of women is similar as men throughout Canada. The following four provinces had the highest concentration of women: Ontario (37%), Quebec (25%), British Columbia (13%) and Alberta (9%).
- ❖ The age group with the highest concentration of women was the 25-44 years old at 33%. The lowest concentration of women was in the 15-24 age group and the 65 years and over age group (13% for both groups).
- ❖ Women were almost as likely as men to have a Bachelor's degree or higher level of schooling (12% versus 14% respectively).

### **Workforce ...**

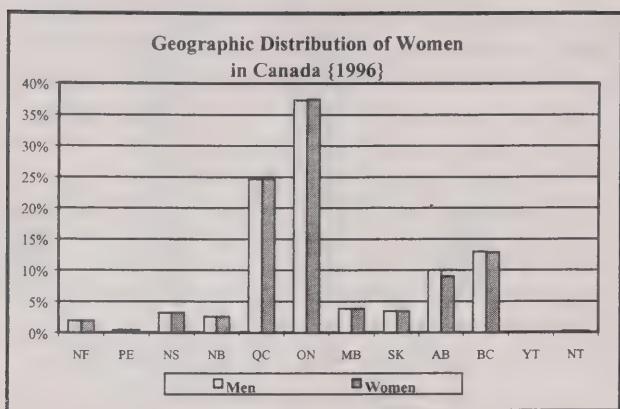
- ❖ The workforce for women (population aged 15 years and over who worked in 1995 or 1996) was about 7.2 million or 46% compared to approximately 15.5 million of the total workforce.
- ❖ The occupational distribution showed more women than men at the professional level (16% compared to 12% respectively), whereas there were fewer women than men at the middle and senior management levels combined (6% compared to 11% respectively).

**Total Population and Workforce for Women  
1996 Census of Canada**

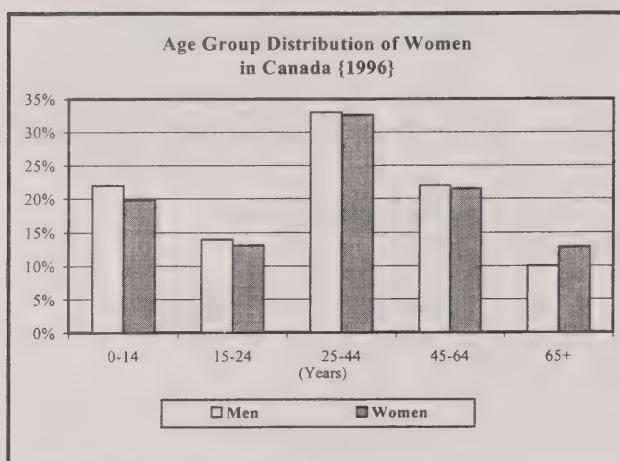
List of Variables	Total Population		
	Total	Male	Female
<b>Population ...</b>			
Population	28,528,125	14,046,880	14,481,245
Population Representation	100.0%	49.2%	50.8%
Population 15 Years & Over	22,628,920	11,022,450	11,606,465
Population Representation	100.0%	48.7%	51.3%
<b>Workforce ...</b>			
Workforce	15,547,115	8,332,190	7,214,925
Workforce Representation	100.0%	53.6%	46.4%

## Women in Canada

### Population ...



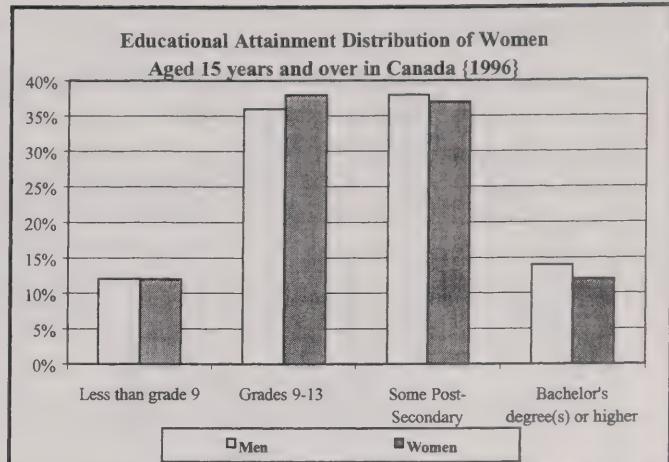
In 1996, women accounted for approximately 14.5 million or 51% of the total population. The majority of women were located in Ontario (37%), Quebec (25%), British Columbia (13%) and Alberta (9%). Almost 40% of women were located in the five designated Census Metropolitan Areas (CMA) under the Act: Toronto, Montréal, Vancouver, Calgary and Edmonton. Over 60% of women (equivalent for men) were located within the 25 Census Metropolitan Areas (CMA) which include all Canadian cities with a population of 100,000 or more. Regions with the lowest representation were Prince Edward Island and the Territories.



Women and men show similar age distribution, with the 25-44 age group being the most heavily populated. About 80% of women were 15 years of age or over and this is comparable to all men. Women accounted for 13% of the over 65 years of age group compared to 10% of all men.

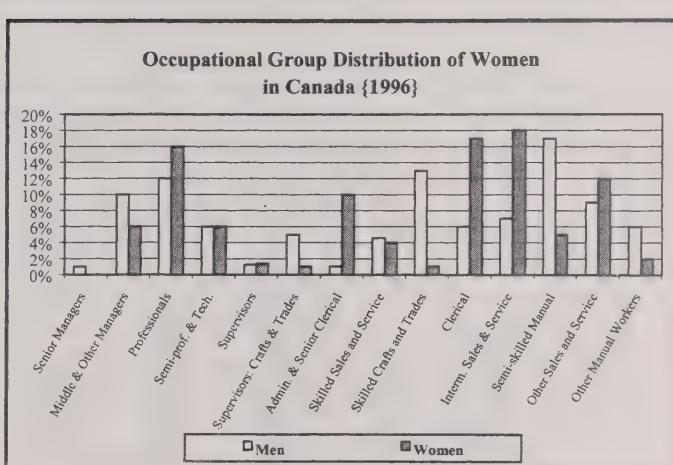
## Schooling ...

The distributions of women and men by levels of schooling are similar. Women were almost equal to men in each category with the exception of Bachelor's degree or higher, where 12% of all women had reached this level of schooling compared to 14% of men.



## Workforce ...

The representation for women in the workforce was approximately 46% or 7.2 million. More than 70% of women were employed in five out of the 14 employment equity occupational groups: intermediate sales and service personnel, clerical workers, professionals, other sales and service personnel, and administrative and senior clerical personnel. Although 16% of women were at the professional group level compared to 12% of men, only 6% of women were in middle or senior management group levels compared to 11% for men.



## Highlights for Aboriginal Peoples

### Population ...

- ❖ In the 1996 Census, Aboriginal peoples accounted for approximately 0.8 million or 3% of the total population. The three sub-groups within Aboriginal peoples were North American Indian (66%), Métis (26%) and Inuit (5%). Multiple response rates accounted for the remaining 3%.
- ❖ Over 80% of Aboriginal peoples were located in five provinces: Ontario (18%), British Columbia (17%), Manitoba (16%), Alberta (15%) and Saskatchewan (14%). This compares to 66% for the total population.
- ❖ The highest concentration of Aboriginal peoples was under 15 years of age with a percentage of 35% compared to 21% for the total population. The lowest concentration of Aboriginal peoples was in the 65 years and over age group (4% for Aboriginal peoples compared to 11% for the total population).
- ❖ Aboriginal peoples were less likely to have a Bachelor's degree or higher level of schooling compared to the total population (3% versus 13% respectively). A total of 62% of Aboriginal peoples had a grade 13 education or less compared to 49% for the total population.

### Workforce ...

- ❖ The workforce for Aboriginal peoples (population aged 15 years and over who worked in 1995 or 1996) was about 0.3 million or 2% of the total workforce of 15.5 million.
- ❖ The occupational distribution for Aboriginal peoples showed the highest concentration in the following occupational groups: semi-skilled manual, intermediate sales and service and other sales and service.

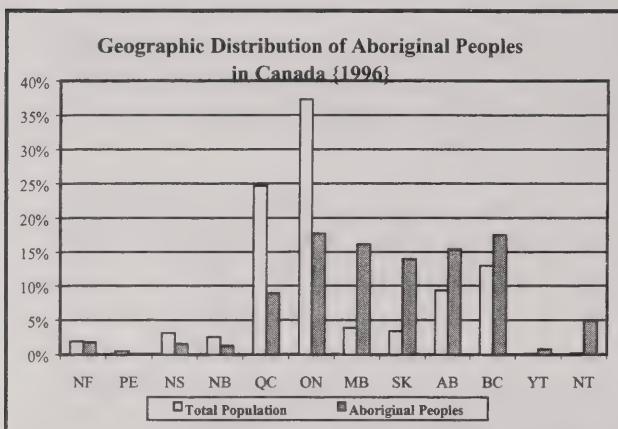
**Total Population and Workforce for Aboriginal Peoples  
1996 Census of Canada**

List of Variables	Total Population			Aboriginal Peoples		
	Total	Male	Female	Total	Male	Female
<b>Population ...</b>						
Population	28,528,125	14,046,880	14,481,245	799,010	390,870	408,135
Population Representation	100.0%	49.2%	50.8%	2.8%	1.4%	1.4%
Population 15 Years & Over	22,628,925	11,022,455	11,606,470	518,590	247,385	271,205
Population Representation	100.0%	48.7%	51.3%	2.3%	1.1%	1.2%
<b>Workforce ...</b>						
Workforce	5,547,115	8,332,190	7,214,925	321,740	170,215	151,525
Workforce Representation	100.0%	53.6%	46.4%	2.1%	1.1%	1.0%

## Aboriginal Peoples in Canada

In the 1996 Census, a direct question was used to identify the Aboriginal population (refer to the Technical Notes section of the manual for further details). Previous Census questionnaires asked for information on cultural or ethnic origin (i.e. French, English, German, Métis, Inuit, etc.). However, the 1996 Census question asked if a person is North American Indian, Métis or Inuit. Note that the two methodological approaches were designed to measure different populations and therefore comparisons are not recommended. The 1996 Census question more closely identifies Aboriginal peoples as defined in our new *Employment Equity Act*.

### Population ...



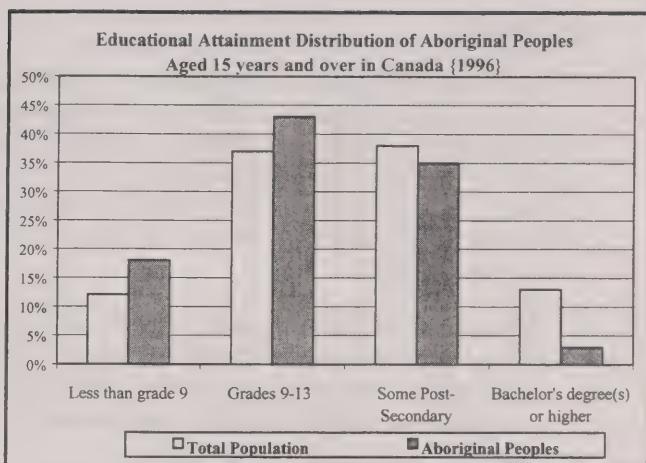
In 1996, Aboriginal peoples accounted for approximately 0.8 million or 3% of the total population. The majority of Aboriginals were located in Ontario (18%), British Columbia (17%), Manitoba (16%), Alberta (15%) and Saskatchewan (14%). Three designated Census Metropolitan Areas (CMA) under the Act held the highest number of Aboriginals: Winnipeg, Edmonton and Vancouver. One-third (30%) of Aboriginals were located within the 25 Census Metropolitan Areas (CMA) which include all Canadian cities with a population of 100,000 or more. Regions with the lowest representation were Prince Edward Island, the Yukon Territory and New Brunswick.



Aboriginal peoples are a younger population compared to the total population (35% under the age of 15 and 21% respectively). Over 80% of Aboriginal peoples were under the age of 45 compared to about 60% of the total population. Only 4% of Aboriginal peoples were over 65 compared to 11% of the total population (more than twice the percentage for Aboriginal peoples).

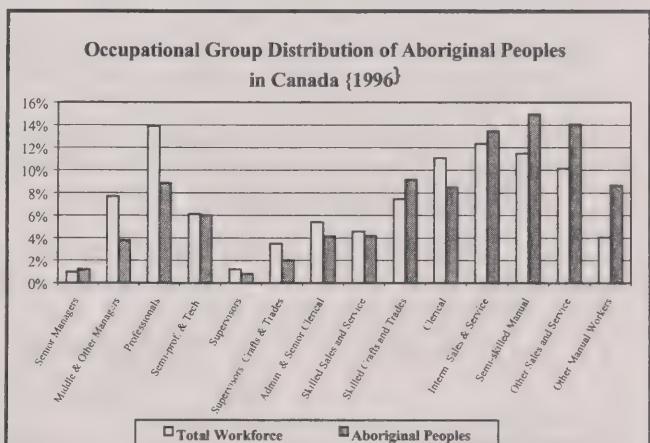
## Schooling ...

There are fewer Aboriginal peoples with high levels of schooling compared to the total population. Only 3% of Aboriginal peoples obtained a Bachelor's degree or higher compared to 13% of the total population. On the other hand, 62% of Aboriginal peoples attained a grade 13 level of schooling or below compared to 49% of the total population. However, for persons with some post-secondary education, there is not much difference between Aboriginal peoples and the total population (3%).



## Workforce ...

The total representation for Aboriginal peoples in the workforce was approximately 0.3 million or 2%. Over 40% of Aboriginal peoples were employed in three out of the 14 employment equity occupational groups: semi-skilled manual workers, other sales and service personnel and intermediate sales and service personnel. In the middle and other managers group, there were 4% of Aboriginal peoples compared to 8% for the total workforce. Aboriginal peoples accounted for 9% of the professional group compared to 14% for the total workforce.



## **Highlights for Members of Visible Minorities**

### **Population ...**

- ❖ Members of visible minorities accounted for approximately 3.2 million or 11% of the total population according to the 1996 Census. The three largest visible minority sub-groups were Chinese (27%), South Asian (21%) and Black (18%). Multiple responses accounted for 2%.
- ❖ Over 95% of members of visible minorities were located in four provinces: Ontario (53%), British Columbia (21%), Quebec (14%) and Alberta (8%). This compares to 84% for the total population.
- ❖ The age group with the highest concentration for members of visible minorities was the 25-44 years with a percentage of 35% compared to 33% for the total population. The lowest concentration of members of visible minorities was in the 65 years and over age group (6% for members of visible minorities compared to 11% for the total population).
- ❖ Members of visible minorities were more likely to have a Bachelor's degree or higher level of schooling compared to the total population (19% versus 13% respectively).

### **Workforce ...**

- ❖ The workforce for members of visible minorities (population aged 15 years and over who worked in 1995 or 1996) was about 1.6 million or 10% of the total workforce of 15.5 million.
- ❖ The occupational distribution for members of visible minorities showed more concentration in lower level positions compared to the total population (56% for visible minorities compared to 48% for the total population).

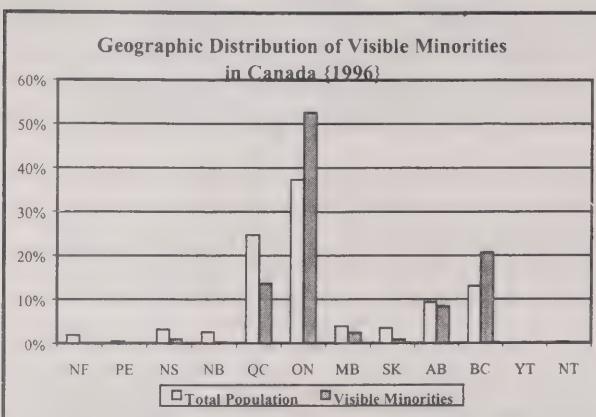
### **Total Population and Workforce for Members of Visible Minorities 1996 Census of Canada**

List of Variables	Total Population			Visible Minorities		
	Total	Male	Female	Total	Male	Female
<b>Population ...</b>						
Population	28,528,125	14,046,880	14,481,245	3,197,480	1,565,550	1,631,925
Population Representation	100.0%	49.2%	50.8%	11.2%	5.5%	5.7%
Population 15 Years & Over	22,628,920	11,022,450	11,606,465	2,419,140	1,166,790	1,252,345
Population Representation	100.0%	48.7%	51.3%	10.7%	5.2%	5.5%
<b>Workforce ...</b>						
Workforce	15,547,115	8,332,190	7,214,925	1,593,635	843,770	749,865
Workforce Representation	100.0%	53.6%	46.4%	10.3%	5.4%	4.8%

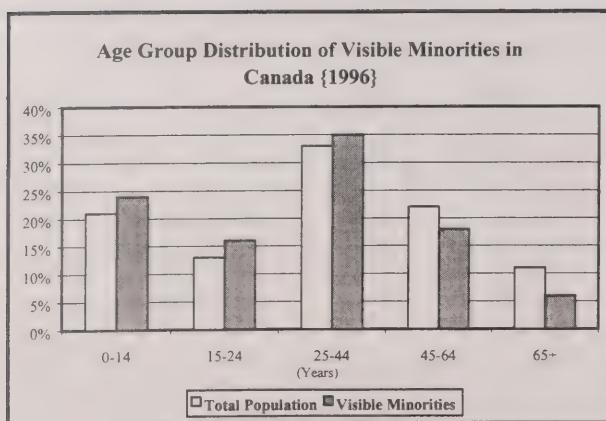
## Members of Visible Minorities in Canada

In the 1996 Census, a more direct question was used to identify members of the visible minority population. Previous Census questionnaires asked for information on cultural or ethnic origin (i.e. French, English, German, Chinese, Black etc.). The new question asked if the respondent is White, Chinese, Black, West/Asian and Arab among others (refer to the Designated Group Definitions of the manual for a detailed list of the visible minority sub-groups). As a result of the change in the question, comparisons between previous Census data on members of visible minorities and the 1996 Census are not recommended.

### Population ...



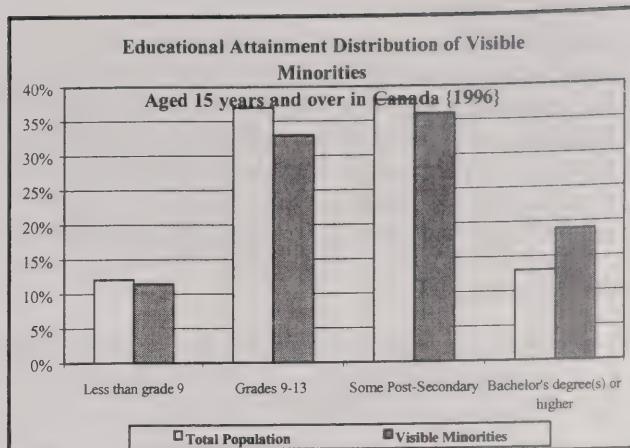
In 1996, members of visible minorities accounted for approximately 3.2 million or 11% of the total population. The majority of visible minorities were located in Ontario (53%), BC (21%), Quebec (14%) and Alberta (8%). A total of five designated Census Metropolitan Areas (CMA) under the Act held the highest number of visible minorities: Toronto, Vancouver, Montréal, Calgary and Edmonton. Over 90% of visible minorities, compared to 62% for the total population, were located within the 25 Census Metropolitan Areas (CMA) which include all Canadian cities with a population of 100,000 or more. Regions with the lowest representation were the Territories, Prince Edward Island, Newfoundland and New Brunswick.



Members of visible minorities and the total population show similar age distribution, with the 25-44 age group being the most heavily populated. Over 75% of the members of visible minorities were 15 years of age or over compared to almost 80% of the total population. Only 6% of the members of visible minorities were over 65 compared to 11% of the total population.

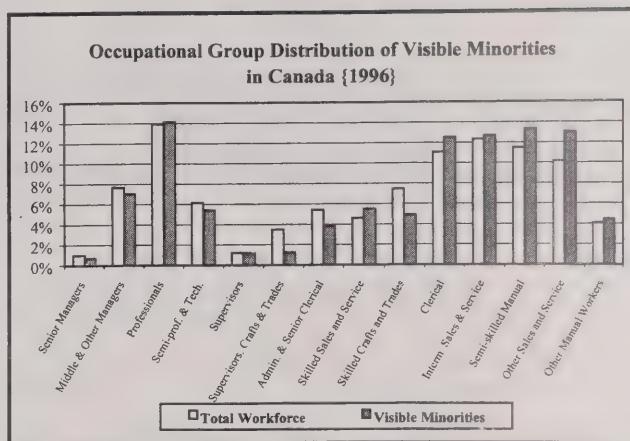
## Schooling ...

Although members of visible minorities tend to be slightly more concentrated in lower level positions compared to the total population, 19% of members of visible minorities had Bachelor's degrees or higher, while only 13% of the total population had the same level of schooling. At the higher levels of schooling, members of visible minorities are better represented whereas the other three schooling levels show members of visible minorities with a slightly lower distribution compared to the total population.



## Workforce ...

The total representation for members of visible minorities in the workforce was approximately 1.6 million or 10%. A total of 65% of members of visible minorities were employed in five out of the 14 employment equity occupational groups: professionals, semi-skilled manual workers, other sales and service personnel, clerical workers and intermediate sales and service personnel.



## **Highlights for Persons with Disabilities**

### **Population ...**

- ❖ In 1991, there were approximately 1.3 million persons with disabilities limited at work/perception (LAW/P), between the ages of 15 and 64. This represents 7% of the total population in this age group.
- ❖ Almost 82% of persons with disabilities were located in four provinces: Ontario (39%), Quebec (17%), British Columbia (14%) and Alberta (11%), this compares to 84% of the total population.
- ❖ Persons with disabilities were older than the total population. In 1991, 45% of persons with disabilities were between the age of 45-64 compared to only 29% of the total population. Only 10% of persons with disabilities were in the 15 to 24 year old category compared to 21% of the total population.
- ❖ Twenty per cent of persons with disabilities (LAW/P) had attained less than grade nine education compared to 10% of the total population. In contrast, only 7% of persons with disabilities (LAW/P) had a university certificate/diploma/degree or higher compared to 14% of the total population.

### **Workforce ...**

- ❖ The workforce for persons with disabilities (LAW/P) between the ages of 15 and 64 who worked anytime between 1986 and 1991 was about 1.0 million compared to approximately 15.1 million of the total workforce (or 6.5% of the total workforce).
- ❖ The occupational distribution for persons with disabilities (LAW/P) showed more concentration in lower skill level occupations compared to the total population (53% for persons with disabilities compared to 48% for the total population).

### **Total Population and Workforce for Persons with Disabilities (Limited at Work/Perception) 1991 Census of Canada**

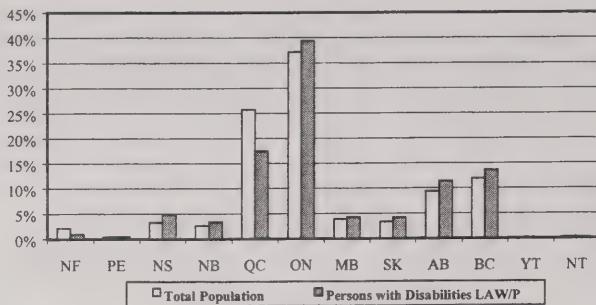
List of Variables	Total Population			Persons with Disabilities		
	Total	Male	Female	Total	Male	Female
<b>Population ...</b>						
Population	26,994,045	13,337,675	13,656,370	n/a	n/a	n/a
Population Representation	100.0%	49.4%	50.6%	n/a	n/a	n/a
Population 15 to 64 Years	18,372,415	9,162,295	9,210,120	1,285,220	634,445	650,775
Population Representation	100.0%	49.9%	50.1%	7.0%	3.5%	3.5%
<b>Workforce ...</b>						
Workforce 15 to 64 Years	15,113,495	8,140,845	6,972,650	997,870	524,525	453,340
Workforce Representation	100.0%	53.9%	46.1%	6.5%	3.5%	3.0%

## Persons with Disabilities (LAW/P) in Canada

The majority of persons with disabilities (LAW/P) had a mobility disability (58%) or an agility disability (55%).

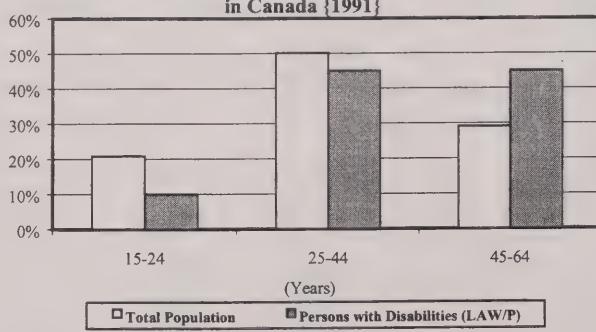
### Population ...

**Geographic Distribution of Persons with Disabilities  
(Limited at Work/Perception) Aged 15-64 Years  
in Canada {1991}**



In 1991, the population for persons with disabilities (LAW/P) aged 15 to 64 years accounted for about 1.3 million persons or 7% of the total population. Similar to the total population, the majority of persons with disabilities were located in Ontario, Quebec, British Columbia and Alberta. A total of 29% of persons with disabilities (LAW/P) were located in Toronto, Montréal, Vancouver and Edmonton, four out of the eight designated Census Metropolitan Areas (CMAs) under the Act, compared to 36% of the total population. Fifty per cent of persons with disabilities were located within 17 out of the 25 CMAs compared to 54% of the total population which includes all Canadian Cities with a population of 100,000 or more. Regions with the lowest concentration were the Territories, Prince Edward Island and Newfoundland.

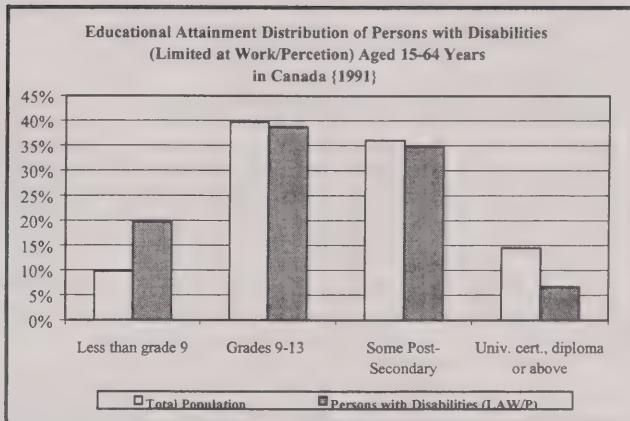
**Age Group Distribution of Persons with Disabilities  
(Limited at Work/Perception) Aged 15-64 Years  
in Canada {1991}**



The 1991 Census data shows that persons with disabilities (LAW/P) are much older than the total population. Almost half (45%) of persons with disabilities were in the 45 to 64 age category. However, only 10% of persons with disabilities (LAW/P) were in the 15 to 24 age category compared to 21% of the total population.

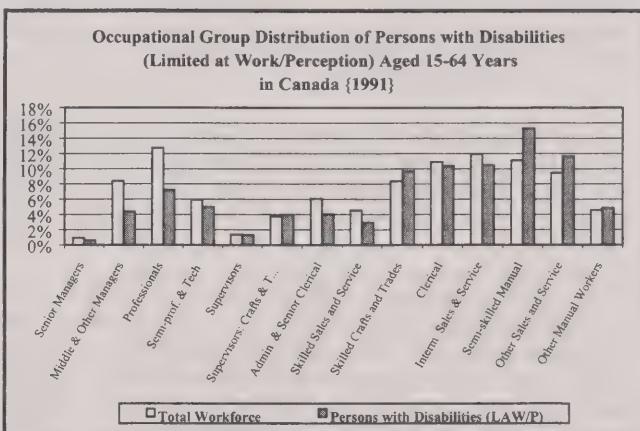
## Schooling ...

Approximately 7% of persons with disabilities (LAW/P) had attained a university certificate/diploma/degree or higher schooing compared to 14% of the total population. On the other hand, 20% of persons with disabilities had less than grade nine compared with only 10% for the total population. Persons with disabilities (LAW/P) had similar schooling attainment levels with the total population in the grades 9-13 and Some Post-Secondary categories.



## Workforce ...

The representation for persons with disabilities (LAW/P) in the workforce was approximately 6.5% or 1.0 million. Fifty eight per cent of persons with disabilities (LAW/P) were employed in five out of the 14 employment equity occupational groups: semi-skilled manual workers, other sales and service personnel, intermediate sales and service personnel, clerical personnel and skilled crafts and trades workers. Most notable were low representation in the middle and other managers and professional groups and high representation in the semi-skilled manual workers group.



## **EMPLOYMENT EQUITY IN CANADA: WOMEN AND MINORITY GROUPS IN THE CANADIAN LABOUR MARKET**

Kamal Dib  
Labour Standards and Workplace Equity  
Labour Program, Human Resources Development Canada

*Employment equity is one of the pillars of Canadian social policy. In 1984 a royal commission recognized that four groups – women, Aboriginal Peoples, persons with disabilities and members of visible minorities – faced barriers in the labour market and designated special measures to correct the situation.*

*This article will outline the progress achieved by women and the three minority groups in the labour market over the past century, leading to the current Employment Equity Program of the Government of Canada.*

*Canada has a long tradition of dealing with workplace issues; in fact, the government is currently celebrating the centennial of Labour. Labour legislation has developed in response to labour market dynamics, including the entry of women in great numbers, the increase in the number of visible minority immigrants since 1960, and the need to address workers' rights and barriers facing women and the three minority groups in employment opportunities.*

### **1. Workplace Equity within the Labour Market**

Employment equity has deep roots in labour issues. The opening statement of the 1944 Declaration of the International Labour Organization identifies equal opportunity for all citizens in every country as a top priority:

- (a) *All human beings, irrespective of race, creed or sex, have the right to pursue both their material well being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;*<sup>1</sup>

The International Labour Organization Declaration further affirms the need to remove the barriers facing individuals in the labour market:

- (b) *The employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well being;*

It also emphasized the need to remove barriers to individuals even before entry into the labour market:

- (c) *The assurance of equality of educational and vocational opportunity.*

Canadian laws existed as early as the late 19th century to protect women against long working hours and exploitative and unsafe working conditions. Fair wages policies began to appear, as did workers' compensation provisions and guarantees of workers' right to unionize.<sup>2</sup> In 1900, a federal body for labour affairs was established and fair wage policies began to develop across the country. Parliament created a federal body to look at labour affairs in 1909 under the *Labour Department Act*.

In the first half of the 20th century, gender, race and age discrimination issues were not yet on the national agenda. Women and minority groups, including

<sup>1</sup> Declaration concerning the aims and purpose of the International Labour Organization, Part II, "The Philadelphia Declaration," 1944. ILO Web site at <http://www.ilo.org>.

<sup>2</sup> In 1872, the *Trades Unions Act* and the *Criminal Law Amendment Act* freed unions from charges of criminal conspiracy. *The System of Industrial Relations in Canada, Figure 6.1*, 1993.

persons with disabilities, were, through explicit laws and social values, excluded from employment opportunities or restricted to certain low-paid jobs. Labour legislation at that time benefited able-bodied white males.

The need for more precise labour legislation was recognized early in the century in response to population growth and the rising number of industrial workers. Canada's population doubled between 1901 and 1931 from 5.4 to 10.4 million.<sup>3</sup> But it was not until the 1950s that laws were enacted to prohibit employers and trade unions from discriminating against employees on the grounds of race, colour, religion or national origin. It was also in the 1950s that equal pay legislation was adopted, prohibiting employers from paying women lower wages for doing the same work as done by men in the same establishment. Concurrently, a better understanding developed of the harmful consequences of discrimination in the workplace.

Nevertheless, discrimination against women, visible minorities, Aboriginal Peoples and persons with disabilities was overt in Canada's workplaces. Women had no rights to accommodate their family-related responsibilities, and employers making hiring decisions opted for racial preferences over skills, and for discriminatory biases over merit. This situation lasted for two generations, before governments enacted effective anti-discrimination legislation in the 1970s and 1980s to protect the rights and dignity of women and minorities.

## 2. Employment Equity

In 1970, the *Canada Employment Fair Practices Act* and the *Female Employees' Equal Pay Act* were incorporated into the *Canada Labour Code*. Supplementing these provisions was subsection 12(2) of the *Public Service Employment Act*, which prohibited discrimination in the establishment of standards for merit in hiring and promotion in the federal public service. In October 1971, Canada adopted a multiculturalism policy, which promotes the respect and preservation of cultural diversity within a bilingual (English and French) framework.

In July 1977, the *Canadian Human Rights Act* was enacted. It stipulates that it is a discriminatory practice to refuse to hire or continue to hire any individual, or in the course of employment to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.

In 1978, the federal government started a voluntary equal opportunity program aimed at private industry, which was expanded in 1979 to companies doing business with the government and to Crown corporations. Between 1980 and 1983, an equal opportunity program was set up in all departments of the federal public service. In 1982, the federal government adopted the *Canadian Charter of Rights and Freedoms*, which accorded all Canadians a constitutional right to equality in employment.

Meanwhile, a royal commission was established in 1983 to study equal employment opportunities. This commission, chaired by Judge Rosalie Abella, tabled a report, *Equality in Employment*, in November 1984. The report states that employment equity "is a strategy designed to obliterate the present and residual effects of discrimination and to open equitably the competition for employment opportunities to those arbitrarily excluded."

In 1986, the federal government responded to the Abella report by proclaiming the *Employment Equity Act* and *Regulations*, covering federally regulated companies with 100 or more employees. These employers operated primarily in the banking, transportation and communications industries. A Federal Contractors Program for Employment Equity was also introduced to cover entities doing business with the federal government. This program covered companies with 100 or more employees that submitted bids or tender for contracts for goods or services valued at \$200,000 or more. These employers were obligated to certify their commitment to implement employment equity initiatives in order to be included on the list of suppliers and as a condition of their contract.

<sup>3</sup> Status of Women Canada, *Statistics on Women in Canada throughout the 20th Century*, October 2000, p. 10.

## 2.1 Canada's Employment Equity Strategy

Under the 1986 *Employment Equity Act*, federally regulated private employers with 100 employees or more were required to develop and implement equity plans and programs that identify and eliminate workplace barriers to women, Aboriginal Peoples, persons with disabilities and visible minorities.

The Act did not cover the federal public service and did not include enforcement mechanisms. Thus, in 1991, a committee of the House of Commons was given the mandate to review the *Employment Equity Act* and make recommendations for improvement. The committee heard from all major stakeholders and those with a special interest in equity issues. The committee's subsequent report, entitled *A Matter of Fairness*, recommended the inclusion of the federal public service under the Act, the elaboration of guidelines to assist employers in the implementation of the Act, and the empowerment of the Canadian Human Rights Commission to monitor and enforce the Act.

In the meantime and in anticipation of legislative change, the *Public Service Reform Act*, which was introduced in 1992, transformed voluntary employment equity policies in the public service into mandatory requirements under the *Financial Administration Act* (Section 7) and the *Public Service Employment Act*.

## 2.2 Overview of the 1995 Act

The new *Employment Equity Act* received royal assent on December 15, 1995. The Act and its *Regulations* came into force on October 24, 1996, creating a new legislative framework for employment equity that governs both private and public sector employers under federal jurisdiction. These employers were mandated to comply with all the requirements of the new Act by October 1997, one year after it had come into force.

The new Act extended coverage to the federal public service, mandated the Canadian Human Rights Commission to conduct on-site compliance reviews, and provided for final enforcement, where necessary, by an Employment Equity Review Tribunal empowered to hear disputes and issue orders. The Act also ensured that employers under the Federal Contractors Program would be subject to requirements equivalent to those under the Act for implementing employment

equity. The Act also provided for a mandatory parliamentary review of the legislation every five years.

The purpose of the Act remained consistent from 1986 to 1995:

... achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal Peoples, persons with disabilities and members of visible minorities by given effect to the principles that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

The new Act required each employer to:

- (a) conduct a workforce survey;
- (b) undertake a workforce analysis;
- (c) conduct a review of its human resource policies and practices;
- (d) prepare an employment equity plan; and
- (e) report annually to the government.

The 1995 Act was designed to resolve long-standing weaknesses of the 1986 Act. The latter's major shortcomings were:

- it covered only a small portion of the Canadian workforce;
- it was felt that the government was imposing the legislation on some employers but not on itself;
- there was no enforcement mechanism for not complying with the Act; and
- there was no clear indication of the agency responsible for the implementation, monitoring and enforcement of the Act.

In light of these weaknesses, the *Employment Equity Act* was strengthened in the following areas:

- coverage was extended to include the federal public service;

- the Act gave the Canadian Human Rights Commission the authority to conduct on-site audits of employers and to verify and gain compliance;
- the Act ensured that the Federal Contractors Program requirements, with regard to implementation of employment equity, would be equivalent to those of employers under the Act.

The perception of the new Act among business and trade unions was positive. Employer organizations regard employment equity as a human resource management tool that helps to attain a representative workforce. Businesses agree that workplace equity makes good business sense and is oriented towards the future. Representatives of designated groups and labour organizations consider employment equity a means to achieve equality in the workplace through the recognition and accommodation of differences.

However, concerns were expressed regarding the implementation of employment equity. These include:

- Costs for organizations – Some organizations were concerned about the costs involved in hiring experts and setting systems up (e.g., to meet the reporting obligation).
- Numerical goals – Some stakeholders perceived the numerical goals as quotas or arbitrary numbers to attain, regardless of the qualifications of candidates. However, unlike the affirmative action programs in the United States, employment equity in Canada aims at removing barriers, using goals as indicators towards achievement of a representative workforce.
- Merit principle – Some stakeholders felt that employment equity would jeopardize the merit principle and would allow the hiring of unqualified candidates. However, qualified candidates do face barriers in the labour market and many Canadians have been denied opportunities because of systemic barriers; hence the need for special measures. Employment equity also requires that merit be respected and that only qualified candidates be considered.
- Consultations – Although labour organizations were consulted, more mechanism collaborations were needed.
- Controversy – Some stakeholders were concerned about the controversial nature of the legislation and warned about a backlash.

#### **Key Guiding Principles in the *Employment Equity Act***

##### **FAIRNESS**

All Canadians, regardless of their personal characteristics, should be able to enter the workforce and advance according to their ability.

##### **FLEXIBILITY**

The best method of ensuring compliance with the legislation is persuasion and education, rather than coercion. Employers are asked to make reasonable efforts to implement their employment equity plan. If implemented, the plan should make reasonable progress in achieving employment equity. Any finding of non-compliance entails a negotiated undertaking between the Human Rights Commission and the employer's representative. A Direction is issued by the Commission only if negotiations do not succeed. Either party has the right to ask for the case to be referred to an Employment Equity Tribunal.

##### **SUPPORT**

Human Resources Development Canada provides support in terms of resources, information and technical tools to assist employers in understanding and fulfilling their obligations. Also recognized, through the Merit Awards Program, are the efforts and special initiatives of employers in achieving their employment equity goals.

#### **Coverage**

- Currently, the Act applies to about 340 private sector companies and Crown corporations employing approximately 600,000 people. It also covers the federal public service, which employed approximately 178,000 people in 1999.
- The Federal Contractors Program for Employment Equity requires employers who do business with the Government of Canada to achieve and maintain a fair and representative workforce. It requires companies that employ 100 or more people, and who obtain goods and services contracts valued at \$200,000 or more, to implement an employment equity plan that meets the Program criteria. There are approximately 850 companies under the Program and they employ more than one million people.

- Together, the workforce covered under the Act and under the Federal Contractors Program represents about 12 per cent of the Canadian labour market (most of the Canadian labour market is under provincial jurisdiction).

## 2.3 Progress Achieved since 1987

Between 1987 and 1998, the workforce representation of members of the four groups designated under the *Employment Equity Act* has increased.

The representation of women increased from 40.9 per cent in 1987 to 44.3 per cent in 1998, against their labour market availability of 46.4 per cent in 1998. In 1998, women's representation was highest in the banking sector, at 72.5 per cent, and lowest in transportation, at 23.6 per cent.

The representation of Aboriginal Peoples rose from 0.7 per cent in 1987 to 1.3 per cent in 1998, against a labour market availability of 2.1 per cent.

Persons with disabilities experienced a less significant rise in representation from 1.6 per cent in 1987 to 2.3 per cent in 1998, against a labour market availability of 6.5 per cent.

Members of visible minorities enjoyed the most rapid growth in representation of the designated groups. Their representation increased from 5.0 per cent in 1987 to 9.9 per cent in 1998, against a labour market availability of 10.3 per cent. Representation was highest in banking, at 15.3 per cent in 1998, and lowest in transportation, at 5.7 per cent.

Furthermore, the representation of all four groups increased significantly in all regions of Canada between 1987 and 1998. Notably, women's representation almost doubled in Yukon and New Brunswick; Aboriginal Peoples' representation increased significantly in western and northern Canada, while persons with disabilities had the most increase in Ontario and western Canada. Visible minorities had the highest representation in Ontario and British Columbia, where their labour availability is relatively high.

Although persons with disabilities have made some gains in employment since the first *Employment Equity Act* came into force in 1986, they still face many barriers to employment and promotion in the private sector. As the Canadian Human Rights Commission

noted in its 1996 annual report, "despite a labour-force availability of 6.5 per cent, the representation of this group has merely inched up from 1.6 per cent to 2.7 per cent." Even that rise was partly attributable to an increase in the number of employees who self-identified as having some form of disability.

Support is increasing in Canada for legislation similar to the 1990 *Americans with Disabilities Act*, which is more comprehensive than similar Canadian legislation. The Province of Ontario repealed its *Employment Equity Act* in 1995 and is currently in the process of enacting a *Persons with Disabilities Act*.

Disability issues were high on the public agenda in Canada in the 1990s. A Task Force on Disability Issues produced a report in 1996 entitled *Equal Citizenship for Canadians with Disabilities: The Will to Act*. In response to the recommendations contained in that report, the federal government, in collaboration with provincial and territorial governments as well as with employers and community organizations, has engaged in efforts to resolve some of the major issues facing persons with disabilities.

### Hirings and Promotions

In the early years of the government's employment equity program, designated groups were more likely to work in clerical occupations than were other employees. However, this concentration has decreased since 1987 and designated groups are increasingly moving toward occupations with more responsibilities and chances for advancement.

For instance, more women are now in supervisory and managerial positions, and more visible minorities are in middle management and professional occupations.

Employers succeeded in increasing the designated groups' shares of hirings and promotions between 1987 and 1998.

In 1998, women accounted for 41.4 per cent of all hirings in the workforce under the Act and won 55.0 per cent of all promotions. Aboriginal Peoples accounted for 1.4 per cent of all hirings and 1.5 per cent of all promotions, almost doubling their shares compared to 1987. Persons with disabilities had 0.9 per cent of hirings and 1.8 per cent of promotions in 1998.

Visible minorities fared very well, accounting for 12.1 per cent of hirings in 1998, against a labour market availability of 10.3 per cent, and 14.1 per cent of all promotions against a representation in the workforce under the Act of 9.9 per cent. The shares were 4.8 per cent and 7.3 per cent respectively in 1987.

Yet more progress is needed in the representation of designated groups in all occupational groups and industrial sectors across Canada.

## 2.4 Looking to the Future

We live in a world of new technology, converging international markets and dynamic trading arrangements. This environment is having a deep impact on the workplace and on the types of occupations in the Canadian labour market. It is shaping the way we view labour standards, employment equity, occupational safety and health, wage structures, and the role of government, unions and employers.

Working women live in a multidisciplinary environment where multi-skilled workers are becoming more common in the workplace. Women are gradually moving out of those occupations that are deemed traditional for them, into engineering, trades, and medical and managerial jobs.

In a world of global competition, relevant skills are becoming scarce and no country, certainly not Canada, can afford to discriminate against its talented visible minority workforce.

In its annual report for the year 2000, the International Labour Organization warned that the process of globalization is hurting workers' rights and eroding gains in the workplace. The report explains that many

countries do not have legislation and programs in place to prepare them for the worst-case scenarios. Some countries do sign on to international agreements but then ignore them. The outcome is a lack of preparedness to face a competitive world, a decline in labour standards, and a rise in discriminatory practices.

Canada has programs and legislation in place to make it immune to the negative impacts of globalization on individuals.

## Conclusion

The changing realities of the workplace have pushed women and other minority groups to the centre of the labour agenda in Canada. The Canadian labour force is dynamic and rapidly changing, as women's participation rises and as women increasingly take on non-traditional occupations. Visible minorities will grow over the next decade and will provide an important pool of skilled labour. Canada continues to modify its policies and programs to tap the full potential of this increasingly diverse workforce.

Workplace equity leads to better human resources management systems, as staffing and career planning become barrier-free to all skilled people.

Employment equity is good for business. This is true not only from a client service perspective but also from a productivity perspective. Employment equity enables skills and human resources to be diverted to where their contribution will be maximized.

Full participation in a global economy depends on the skills of all. Markets are expanding and discrimination is costly to the country that does not remove barriers and implement corrective measures.

## **THE WORKPLACE OF THE FUTURE**

Kamal Dib  
Labour Standards and Workplace Equity  
Labour Program, Human Resources Development Canada

*What kinds of workers are available for the new economy?  
What are the challenges facing human resources development?  
How will Canada respond to globalization?*

Two seminars were held at Labour Operations Directorate, Labour Program, in July and August 2000, at National Headquarters, entitled "Globalization and the Workplace." They were hosted separately by Gerry Blanchard, Director General, and Neil Gavigan, Director, Labour Standards and Workplace Equity, moderated by Rich Watson, Manager, Data Group, and presented by Kamal Dib, a senior officer in the Data Group.

*This article summarizes the main issues discussed at the two seminars.*

### **The Disappearance of Specialization in the Workplace**

Globalization is the convergence of world economies, technologies and cultures into a single marketplace. It has already happened, during the last century, and now we are looking beyond globalization to standardization of labour markets, wages, production processes, trade relations, technology flows, and so on. The information society, like globalization, is also a creation of the last century.

Workers with few skills are leaving factories, to be replaced by multi-skilled workers, robotics and technology. The "routinization" of tasks is giving way to multi-tasked workers who use a computer to do their assigned duties, and perform work previously done by several different people. Jobs that involve repetitive tasks, such as word processing, reception and assembly line work, are increasingly disappearing. The information revolution has destroyed specialization.

Thanks to technology, there is no downtime in organizations. Managers no longer wait for a letter to be typed by a secretary, and workers no longer stand by at the assembly line for three hours because there is nothing coming their way. In a multi-tasked environment, there is always plenty to do. Tasks per worker have multiplied and salary costs have mounted.

In the 20th century, neurosis – due to hierarchy and tight supervision – was the main health problem. In

the 21st century, depression will be the main health concern, as workers become increasingly responsible and accountable for their own work.

Contrary to the thinking of classical economists – who say that specialization is the source of prosperity and comparative advantage – the world is moving towards a convergence of professions and the absence of specialization.

Today what everyone is doing is coming closer to what everyone else is doing. Everyone is developing a mix of skills and becoming equal in productivity. A bank teller, supposedly to be replaced by the ATM, now sells securities and investment products, reviews credit, exchanges foreign funds, runs computer searches and queries, and takes deposits and withdrawals. No matter how unique an occupation is, it still shares a myriad of skills with many other occupations.

*"We may be tempted to believe that the global situation exerts only a secondary influence on our daily work, and then only slowly. We may also think that it is related to the future. But we have already absorbed globalizing influences in many aspects of our daily activities and the files that we work on. We already live in this world that we always thought of as the future."*

(Seminar Participant)

## The Disappearance of the Economics Profession

Economists are hired into the public sector, and less into the private sector in Canada. They do impact analysis of programs and legislation, and of revenues and expenditures. Governments and politicians rely more these days on economic analysis for sound decisions.

Yet universities are encountering difficulties in recruiting high school students into undergraduate economics programs. Students head into multidisciplinary programs in administration and information technology and certain programs in science and engineering.

Many elements from economics are now part of MBA training, and MBA/MPA graduates today have similar skills to economists in certain areas, such as project management, strategic planning and policy.

In 1990, there were 4,202 economics graduates from Canadian universities. By 1996, this number had dropped to 3,179, a loss of 24.5 per cent.

## The Knowledge Economy

Modern economies are now measured by the contribution of know-how to the gross domestic product. More and more, economic growth is being driven by innovation.

Those with a better education are more likely to find jobs. In the past few years in Canada, 2.25 million jobs went to persons with university or other post-secondary education and 139,000 jobs went to those with secondary education. Almost a million individuals with primary or no education lost their jobs in the same period. Unemployment among persons with higher levels of education is lower than unemployment among those with little or no post-secondary education.

## The Shortage of Human Capital

Productivity has increased drastically in the past few years, but knowledge-based workers are becoming scarce. Globalization requires the domestic economy to be based on know-how and high technology, but there are not enough graduates to meet rising demand in the labour market for certain skills.

The needs of private sector industries for growth-oriented investment in human resources should not blind long-term planners to the need to pursue new employees with a balanced education. Graduates in social sciences and administration experienced the fastest growth in employment in Canada in the period 1991-1996. However, more students have moved to vocational training schools and colleges in recent years.

*"I am thinking here of a world of new technologies, converging international markets and trading arrangements, and the impact on the types of occupations in the Canadian labour market, and on the industrial consolidation that we have witnessed in the past 10 years. For instance, the open-sky concept led to a decline in the number of national air carriers in Canada from seven to one. Similar moves have occurred in banking, telecommunications and other economic sectors. Statistics Canada is expanding its listings of occupations and industries in response to this new economy."*

(Seminar Participant)

Canadian universities granted 128,000 bachelor degrees in 1996, 25,000 more than in 1987, a gain of 24.2 per cent.

There was a strong movement of students towards some disciplines and away from others. General degrees in Science rose from 899 in 1990 to 1,392 in 1996. Physical Education dropped from 2,299 in 1990 to 1,974 in 1996, but Human Kinetics, a related field, rose from 358 to 956 in the same period. Business Administration is a classic example of a multi-skill field of study. It was a big attraction, rising from 13,533 to 14,388 graduates. The more specialized field of Health Administration dropped from 320 to 28. Civil Engineering increased from 949 to 1,609 and Other Engineering increased from 755 to 1,230.

## Globalization and the Linguistic Profile of Canadians

In a global market, countries with knowledge of more languages fare better. Aside from the two official languages, Canadians have a stock of heritage languages that could be exploited in the new economy.

The linguistic profile of Canadians whose first language is neither English nor French is: Chinese, 21 per cent; Italian, 18 per cent; German, 16 per cent; Spanish, 12 per cent; Portuguese, 6.0 per cent; Arabic, 5.0 per cent; Polish, 6.0 per cent; other, 16 per cent.

The linguistic profile of Canadians with a first language other than English or French differs among provinces. In Quebec, the top two other languages are: Italian, 24 per cent and Spanish, 24 per cent. In Ontario: Italian, 20 per cent and German, 12 per cent. In British Columbia: Chinese, 35 per cent and other Asian, 14 per cent. In Saskatchewan: Aboriginal languages, 28 per cent and Ukrainian, 23 per cent.

To compare Canada's linguistic profile to its international trading partners, Japan accounts for 14 per cent of Canada's international trade; Germany, 7.0 per cent; France, 5.0 per cent; Britain, 4.4 per cent; China, 3.2 per cent; Italy, 4.0 per cent and Spain, 2.0 per cent.

These patterns are dictated more by the importance of these trading nations than by the stock of heritage languages in Canada. For instance, Japanese figures less prominently in Canada's linguistic stock than other languages, but trade with Japan is very important.

## **Human Capital and Labour Migration**

Immigration is a positive factor in the Canadian economy. It contributes skills and replenishes the declining population. Canada received 150,000 immigrants in 1972; the number had risen to 225,000 by 1996.

The achievements of immigrants in Canada vary from period to period. In the 1950s and 1960s, immigrants achieved good salaries and relatively easy integration. This has become a longer and more difficult process since the 1970s. It took immigrants five to six years to achieve good salaries in the 1950s and 1960s, but the length of time has increased to 13 to 15 years in the past three decades.

Economic migrants, refugees and persons reuniting with their family represent a growing portion of total immigration. The changing patterns of immigrant source countries, away from Europe and toward Asia, Africa and Latin America, may lead to discrimination in the labour market, especially against visible minorities; and may account for the changing structures of the labour market, where many

immigrants suffer higher unemployment rates and lower salaries compared to earlier immigrants.

**Brain Drain – Some analysts say that the brain drain is a serious problem, especially the exodus of Canadian talent in specific sectors to the United States. The search for talented human resources is currently the greatest challenge facing major global corporations. It is important to monitor the migration patterns of highly skilled knowledge workers in order to design programs to benefit the Canadian economy.**

## **The Impact of Aging**

The Canadian labour force is experiencing a reduction in the number of years of active participation per worker.

In 1921, the average person entered the labour force at age 17.5 years, retired at age 62.7, and died at age 67.7. This person spent 45.2 years in active participation in the labour force, and 4.9 years in retirement.

The average age of a person entering the labour market in 1986 was 20 years. That person will retire at age 65.5 and die at age 73.8, thus spending 39.4 years in active labour force participation and 13.5 years in retirement.

The additional years of life expectancy have added to the cost of old age and health care benefits and pensions. The Quebec population is aging more rapidly than the rest of Canada.

However, there were more Canadians, in percentage terms, employed in the second half of the 20th century than in the first half, as women joined the workforce in big numbers starting in the early 60s. Also, workers in the second half of the 20th century had more tools and technology and better labour and safety standards. In the first half of the century, there was more exposure to workplace hazards (owing to greater employment in workplaces such as railroads and mines), as well as more accidents and disease).

Women's participation will continue to increase in all occupations, considering health, education and life expectancy factors. In certain occupations women are the majority, accounting for up to 80 per cent of persons in some jobs. But women constitute a small minority, not more than 20 per cent, in other occupations, especially in the trades.

Retired persons in Canada rely more on government transfers now than they did in the past. In 1967, 62 per cent of revenues to aged persons came from government transfer payments. In 1997, the figure was 68 per cent. Meanwhile, the percentage of personal contributions to private saving plans has remained virtually unchanged since 1972. A worker still contributes approximately the same share of income to these savings instruments today as a worker did in 1972. The cost to government of health care as a proportion of social services is expected to increase from 13.5 per cent in 1994 to 17.2 per cent in 2031, and the cost of pensions is expected to rise from 5.2 per cent to 11.6 per cent. This situation could become more acute, as personal incomes may deteriorate with aging and dependency on social assistance.

*"These changes will shape the ways we view labour relations, wage structures, education, and the role of government, the unions and employers. They will also influence the four employment equity designated groups. Think of women in the workplace in a multidisciplinary environment; think of visible minorities in Canada in the context of a global workplace where relevant skills are becoming scarce; think of persons with disabilities and the aging population in Canada and the demand on health and social services. Think of Canada's Aboriginal people and the impact of globalization on the local culture and on Canadian society in general."* (Seminar Participant)

## **Appendix/Annexe IA - List of Separate Employers/ La liste des employeurs distincts**

Canadian Nuclear Safety Commission	Commission canadienne de sûreté nucléaire
Parks Canada Agency	Agence parcs Canada
Canadian Food Inspection Agency	Agence canadienne d'inspection des aliments
Canadian Forces Personnel Support Agency	Agence de soutien du personnel des forces canadiennes
Communications Security Establishment	Centre de la sécurité des télécommunications
Canadian Security Intelligence Service	Service canadien du renseignement de sécurité
Canada Customs and Revenue Canada	Agence des douanes et du revenu du Canada
National Energy Board	Office national de l'énergie
National Film Board of Canada	Office national du film
National Research Council of Canada	Conseil national de recherches du Canada
Natural Sciences and Engineering Research Council of Canada	Conseil de recherches en sciences naturelles et en génie du Canada
Office of the Auditor General of Canada	Bureau du vérificateur général du Canada
Office of the Superintendent of Financial Institutions of Canada	Bureau du surintendant des institutions financières
Statistical Survey Operations	Opérations des enquêtes statistiques
Social Sciences and Humanities Research Council of Canada	Conseil de recherches en sciences humaines du Canada

## **Appendix/Annexe IB - Legislated Employment Equity Program Employers/Les employeurs visés par le Programme légiféré d'équité en matière d'emploi**

### **Banks/Banques**

Banca Commerciale Italiana of Canada  
Bank of America Canada  
Bank of Canada  
Bank of Montreal  
Bank of Nova Scotia (The)  
Banque Laurentienne du Canada  
Banque nationale de Paris (Canada) .  
Banque Nationale du Canada  
Canadian Imperial Bank of Commerce  
Canadian Western Bank  
Citibank Canada Limited  
Citizens Bank of Canada  
Deutsche Bank of Canada  
HSBC Bank Canada  
ING Bank of Canada  
MBNA Canada Bank  
National Bank of Greece (Canada)  
Royal Bank of Canada  
Société Générale (Canada)  
Symcor Services Inc.  
The Toronto-Dominion Bank

### **Transportation/Transports**

1641-9749 Quebec Inc.  
168886 Canada Inc.  
3087-9449 Québec Inc.  
3793486 Canada Ltée/Ltd.  
3846113 Canada Inc.  
591182 Ontario Ltd.  
682439 Ontario Inc.  
A.J. Bus Lines Ltd.  
Acadian Lines Limited  
ACRO Aerospace Inc.  
Adby Transport Limited  
Administration portuaire de Montréal  
Aéroports de Montréal  
Air Alliance Inc.  
Air BC Limited  
Air Canada

Air Creebec Inc.  
Air France Compagnie Nationale  
Air Inuit Ltd.  
Air Nova Inc.  
Air Ontario Inc.  
Air Transat A.T. Inc.  
Algoma Central Corporation  
Algoma Central Railway Inc.  
Alliance Pipeline Ltd.  
Allied Systems (Canada) Company  
American Airlines Inc.  
Apex Motor Express Ltd.  
Armour Transport Inc.  
Arnold Bros Transport Limited  
Association des employeurs maritimes  
ATCO Frontec Corporation  
Atlantic Towing Limited  
Atomic TCT Logistics Inc.  
Autocar Connaisseur Inc.  
B & R Eckel's Transport Ltd.  
BAX Global (Canada) Limited  
Bay Ferries Limited  
BC Maritime Employers Association  
BCR Marine Ltd.  
Bearskin Lake Air Service Limited  
Big Freight Systems Inc.  
Big Horn Transport Ltd.  
Bison Diversified Inc.  
Bradley Air Services  
Brewster Transport Company Limited  
British Airways  
Brookville Carriers Inc.  
Bruce R. Smith Limited  
Byers Transport Limited  
Calac Trucking Ltd.  
Calgary Airport Authority  
Calm Air International Limited  
Canada 3000 Airlines Limited  
Canada 3000 Airport Services Limited  
Canada Cartage System Limited  
Canada Maritime Agencies Limited  
Canadian Freightways Eastern Limited  
Canadian Freightways Limited  
Canadian National Railway Company  
Canadian Pacific Railway Company

Canadian Regional Airlines (1998) Ltd.  
Canxpress Ltd.  
Caron Transportation Systems Partnership  
Cast North America Inc.  
Cathay Pacific Airways Limited  
Challenger Motor Freight Inc.  
CHC Helicopters International Inc.  
Chemin de fer QNS&L  
Clarke Inc.  
Conair Group Ltd.  
Consolidated Aviation Fueling and Services  
Consolidated Fastfrate Inc.  
D&W Forwarders Inc.  
Day and Ross Inc.  
Delta Air Lines Inc.  
Dicom Montreal  
Direct Integrated Transportation  
Dixon Van Lines Ltd.  
Edmonton Regional Airports Authority  
Emery Air Freight Corporation  
Enbridge Pipelines Inc.  
Entreprises de Transport J.C.G. Inc.  
Erb Enterprises Inc.  
Eurocopter Canada Limited  
Execaire Inc.  
Fednav Limited  
Field Aviation Company Inc.  
Floyd Sinton Limited  
Fred Guy Moving & Storage Ltd.  
Gerth Transport Ltd.  
Global Forwarding Company Limited  
GOJIT Logistique Inc.  
Gosselin Express Ltée  
Great Canadian Railtour Company Ltd.  
Greater Toronto Airports Authority  
Greyhound Canada Transportation Corporation  
Grimshaw Trucking and Distributing Ltd.  
Groupe Alcan Métal Primaire, Division d'Alcan Inc.  
H & R Transport Ltd  
H.M. Trimble and Sons (1983) Ltd.  
Halifax Employers Association Inc.  
Helijet International Inc.  
High Tech Express & Distribution Inc.  
Highland Moving and Storage Ltd.  
Horizon Air Industries Inc.

Hudson General Aviation Services Inc.  
Hunterline Management Services  
Hutton Transport Limited  
Inchcape Shipping Services Inc.  
Innotech Aviation Limited  
International Air Transport Association  
J. & T. Murphy Limited  
J.D. Smith and Sons Ltd.  
J.I. Denure (Chatham) Limited  
Jay's Moving and Storage  
Jet Transport Ltd.  
Kelowna Flightcraft Air Charters Ltd.  
Kelowna Flightcraft Group of Companies  
Kenmore Transportation Inc.  
Kenn Borek Air Ltd.  
Kindersley Transport Ltd.  
Kleynsen Transport Ltd.  
Kriska Holdings Ltd.  
Kunkel Bus Lines Ltd.  
L.E. Walker Transport Limited  
Laidlaw Carriers Inc.  
Laidlaw Transit  
Laidlaw Transit Ltd.  
Levy Transport Ltée  
Liberty Linehaul Inc.  
Logistec Corporation  
Lufthansa German Airlines  
MacKinnon Transport Inc  
Marine Atlantic Inc.  
McKinlayTransport LP  
Meyers Transport Limited  
Midland Transport Limited  
Mill Creek Motor Freight  
Montship Inc.  
Mullen Trucking Inc.  
Municipal Tank Lines Limited  
N. Yanke Transfer Ltd.  
Nesel Fast Freight Inc.  
Northern Transportation Company Limited  
Northumberland Ferries Limited  
OC Transpo  
Ocean Services Limited  
OK Transportation Ltd.  
Pacific Coastal Airlines Limited  
Paul's Hauling Ltd.

Peace Bridge Brokerage Limited  
Penetang-Midland Coach Lines Limited  
Penner International Inc.  
Pentastar Transportation Ltd.  
Perimeter Airlines (Inland) Ltd.  
Perimeter Aviation Ltd.  
PLH Aviation Services Inc.  
Pole Star Transport Incorporated  
Porter Trucking Ltd.  
Premay Equipment Ltd.  
Provincial Airlines Limited  
Quik X Transportation Inc.  
RaiLink Canada Ltd.  
Rainbow Transport (1974) Ltd.  
Reimer Express Lines  
Ridsdale Transport Ltd  
Rivtow Marine Inc.  
Robyns Transportation and Distribution Services Ltd.  
Rosedale Transport Limited  
Rosenau Transport Ltd.  
ROYAL AVIATION INC  
Ryder Truck Rental Canada Limited  
Safety-Kleen Ltd.  
Saskatchewan Transportation Company  
Schneider National Carriers Canada  
Seaspan International Ltd.  
Secunda Marine Services Ltd.  
Serco Facilities Management Inc.  
Services aéroportuaires Handlex Inc.  
Sharp Bus Lines Ltd.  
Skyservice Airlines Corporated  
Skyservice F.B.O. Inc. and Skyservice Aviation Inc.  
SLH Transport Inc.  
SMT (Eastern) Limited  
Société de transport de l'Outaouais  
Spar Aerospace Limited  
Speedy Heavy Hauling a division of Cage Logistics Inc.  
St. Lawrence Seaway Management Corporation  
Sunbury Transport Limited  
Swanberg Bros. Trucking Ltd.  
T.E.A.M. Logistics Systems Inc.  
Tallman Transports Ltd.  
Tippet Richardson Limited  
TNT Canada Inc.  
Toronto Port Authority

Toronto Terminals Railway Co. Ltd. (The)  
Trans Mountain Pipe Line Company Ltd.  
Transcanada Pipelines Limited  
Transfreight Inc.  
Trans-Frt. McNamara Inc.  
Transit Windsor  
Transport Américain Canadien C.A.T. Inc.  
Transport Asselin Ltée  
Transport Bernieres Inc.  
Transport Besner Inc.  
Transport Cabano Kingsway Inc.  
Transport Couture et Fils Ltée.  
Transport Desgagnés inc.  
Transport Guilbault Inc.  
Transport Herve Lemieux (1975) Inc  
Transport Morneau Inc.  
Transport NJN Inc.  
Transport Robert (1973) Ltée  
Transport Thibodeau Inc.  
Transport Thom Ltée  
Transx Ltd.  
Trentway Wagar Inc.  
Tri-Line Expressways Ltd.  
Trimac Transportation Management Ltd.  
TSI Terminal Systems Inc.  
TST Solutions Inc.  
United Airlines, Inc.  
Upper Lakes Group Inc.  
US Airways Inc.  
Vancouver International Airport Authority  
Vancouver Port Authority  
Van-Kam Freightways Ltd.  
Verspeeten Cartage Ltd.  
Via Rail Canada Inc.  
Voyageur Airways Limited  
Wackenhut of Canada Limited  
Warren Gibson Limited  
Wasaya Airways Limited Partnership  
Westcan Bulk Transport Ltd.  
Westcoast Energy Inc.  
Western Moving and Storage (1962) Ltd.  
Western Stevedoring Company Limited  
WestJet Airlines Ltd.  
Westshore Terminals Ltd.  
Williams Moving and Storage (BC) Ltd.

Winnipeg Airport Authority  
Worldwide Flight Services  
XTL Transport Inc.  
Yellow Freight System, Inc.

**Communications/Communications**

2953285 Canada Inc.  
ACC TelEnterprises Ltd.  
Access Communications Co-operative Limited  
Aliant Telecom Inc.  
Alliance Atlantis Communications  
AMTELECOM Group Inc.  
AT & T Canada Corp.  
BCTV (a Division of Global)  
Bell Canada  
Bell Intrigna Inc.  
Bell Mobilité Radio Communications Inc.  
Bell Mobility Cellular Inc.  
Bell Mobility Paging  
Bell Nexxia  
Blackburn Radio Inc.  
Cable Atlantic Inc.  
Call-Net Enterprises  
Canada Post Corporation  
Canadian Broadcasting Corporation  
Canadian Satellite Communications Inc.  
Canpar Transport Ltd.  
Canwest Television Inc.  
CF Télévision Inc.  
CHCH  
CTV Television (a Division of Global)  
CHUM Limited  
CICT Television (a Division of Global)  
CITV Television (a Division of Global)  
Cogeco Câble (Canada) inc.  
Cogeco Cable Systems Inc.  
Cogeco Radio-télévision inc.  
Corus Entertainment Inc.  
Craig Broadcast Alberta Inc.  
Craig Broadcast Systems Inc.  
CTV Inc. Netstar Communications  
CTV Television Inc. - ATV/ASN  
CTV Television Inc. - CFCN  
CTV Television Inc. - CFRN  
CTV Television Inc. - CFTO/CTV

CTV Television Inc. - CIVT  
CTV Television Inc. - CJOH  
CTV Television Inc. - CKCO  
CTV Television Inc. - MCTV  
DHL International Express Ltd.  
Dynamex Canada Inc.  
Elyps Solutions de Répartition  
Expertech Bâtisseur de réseaux inc.  
Federal Express Canada Ltd.  
Global Communications (Maritime Division)  
Global Communications Limited  
Golden West Broadcasting Ltd.  
Groupe TVA inc.  
Jim Pattison Industries Ltd.  
Manitoba Telecom Services Inc.  
Maritime Broadcasting System Limited  
Mayne Nickless Transport Inc.  
Microcell Telecommunications Inc.  
Moffat Communications Limited  
Monarch Broadcasting Ltd.  
MTS Mobility Inc  
MTS Netcom Inc.  
MusiquePlus/MusiMax  
NBTEL Inc.  
Newcap Broadcasting, A division of Newcap Inc.  
Norigen Communications Inc.  
Nortel Networks  
Northern Telephone Limited  
Northwestel Inc.  
Paging Network of Canada  
Pelmorex Inc.  
Primus Telecommunications Canada Inc.  
Purolator Courier Ltd.  
Radio 1540 Limited  
Radio Astral  
Radio Nord inc.  
Rawlco Communications Ltd.  
Regional Cablesystems Inc.  
Réseau des Sports (RDS) inc. (Le)  
Rogers Broadcasting Limited  
Rogers Cable T.V. Limited  
Rogers Communications Inc.  
Rogers Wireless Inc.  
RSL COM Canada Inc.  
Shaw Communications Inc.

Shaw MobileComm Inc.  
Shaw Radio Ltd.  
Sports Network Inc. (The)  
Standard Radio Inc.  
Star Choice Communications Inc.  
Stratos Global Corporation  
Télébec ltée  
Téléglobe Canada Inc.  
Télémédia Radio Inc.  
Tele-Mobile Company  
Telesat Canada  
Télévision Quatre Saisons  
TELUS Communications (Edmonton) Inc.  
Telus Communications (Qc) Inc.  
Telus Inc.  
Thunder Bay Telephone  
United Parcel Service Canada Ltd.  
Videon CableSystems Alberta Inc.  
Videon Cablesystems Inc.  
Vidéotron ltée  
Vidéotron Télécom inc.  
YTV Canada Inc.

#### **Other sectors/Autres secteurs**

Adm Agri Industries Ltd.  
Aeroguard Inc. and Aeroguard Company Ltd.  
Agricore Cooperative Limited  
Atlantic Turbines International Inc.  
Atomic Energy of Canada Limited  
Banque de développement du Canada  
Brinks Canada Limited  
Cameco Corporation  
Canada Council (The)  
Canada Lands Company CLC Limited  
Canada Malting Company Limited  
Canada Mortgage and Housing Corporation  
Canadian Bankers Association  
Canadian Museum of Nature  
Canadian Press (The)  
Canadian Wheat Board  
Cargill Limited  
Cogema Resources Inc.  
Defence Construction (1951) Limited  
Export Development Corporation  
Farm Credit Corporation

Freshwater Fish Marketing Corporation  
General Electric Canada Inc.  
Hudson Bay Mining and Smelting Co. Limited  
International Development Research Centre  
James Richardson International Limited  
Landmark Feeds Inc.  
Masterfeeds a Division of AGP Inc.  
MDS Nordion Inc.  
N.M. Paterson and Sons Limited  
National Arts Centre Corporation  
National Capital Commission  
National Gallery of Canada  
National Museum of Science and Technology  
Nav Canada  
Ontario Power Generation  
Pacific Elevators Limited  
Parrish and Heimbecker Limited  
Pioneer Grain Company Limited  
Pioneer Grain Terminal Limited  
Prince Rupert Grain Ltd.  
Reuters Information Services (Canada) Limited  
Ridley Inc.  
Robin Hood Multifoods Inc.  
Royal Canadian Mint  
Saskatchewan Wheat Pool  
Sécur Inc.  
Securicor Canada Cash Services  
Société du Musée des civilisations  
Téléfilm Canada  
TELUS Management Services Inc.  
Theratronics International Ltd.  
United Grain Growers Limited  
Verreault Navigation inc.  
Zircatec Precision Industries Inc.  
Société du Vieux-Port de Montréal Inc.

# **Appendix/Annexe IC - Public Service Staff Relations Act/ Loi sur les Relations de travail dans la fonction publique**

## **SCHEDULE I/ ANNEXE I PART I/ PARTIE I**

Departments and other portions of the public service of Canada in respect of which Her Majesty as represented by the Treasury Board is the employer. Departments named in Schedule I to the Financial Administration Act.

Ministères et autres secteurs de l'administration publique fédérale pour lesquels Sa Majesté, représentée par le Conseil du Trésor, est l'employeur. Ministères mentionnés à l'annexe I de la Loi sur la gestion des finances publiques.

Atlantic Canada Opportunities Agency	Agence de promotion économique du Canada atlantique
Canada Industrial Relations Board	Conseil canadien des relations industrielles
Canada Information Office	Bureau d'information du Canada
Canadian Artists and Producers Professional Relations Tribunal	Tribunal canadien des relations professionnelles artistes-producteurs
Canadian Centre for Management Development	Centre canadien de gestion
Canadian Dairy Commission	Commission canadienne du lait
Canadian Environmental Assessment Agency	Agence canadienne d'évaluation environnementale
Canadian Forces Grievance Board	Comité des griefs des Forces canadiennes
Canadian Grain Commission	Commission canadienne des grains
Canadian Human Rights Commission	Commission canadienne des droits de la personne
Canadian Human Rights Tribunal	Tribunal canadien des droits de la personne

Canadian Intergovernmental Conference Secretariat	Secrétariat des conférences intergouvernementales canadiennes
Canadian International Development Agency	Agence canadienne de développement international
Canadian International Trade Tribunal	Tribunal canadien du commerce extérieur
Canadian Radio-television and Telecommunications Commission	Conseil de la radiodiffusion et des télécommunications canadiennes
Canadian Secretariat	Secrétariat canadien
Canadian Space Agency	Agence spatiale canadienne
Canadian Transportation Accident Investigation and Safety Board	Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports
Canadian Transportation Agency	Office des transports du Canada
Civil Aviation Tribunal	Tribunal de l'aviation civile
Competition Tribunal	Tribunal de la concurrence
Copyright Board	Commission du droit d'auteur
Correctional Service of Canada	Service correctionnel du Canada
Director of Soldier Settlement	Directeur de l'établissement de soldats
The Director, The Veterans' Land Act	Directeur des terres destinées aux anciens combattants
Emergency Measures Organization	Organisation des mesures d'urgence
Energy Supplies Allocation Board	Office de répartition des provisionnements d'énergie
Federal-Provincial Relations Office	Secrétariat des relations fédérales-provinciales
Fisheries Prices Support Board	Office des prix des produits de la pêche
Government Printing Bureau	Imprimerie de l'État

Hazardous Materials Information Review Commission	Conseil de contrôle des renseignements relatifs aux matières dangereuses
Immigration and Refugee Board	Commission de l'immigration et du statut de réfugié
Information Canada	Information Canada
International Joint Commission (Canadian Section)	Commission mixte internationale (section canadienne)
Law Commission of Canada	Commission du droit du Canada
Maritimes Marshland Rehabilitation Administration	Administration de l'utilisation des terrains marécageux des provinces maritimes
Military Police Complaints Commission	Commission d'examen des plaintes concernant la police militaire
Millennium Bureau of Canada	Bureau du Canada pour le millénaire
NAFTA Secretariat - Canadian Section	Secrétariat de l'ALÉNA- Section canadienne
National Archives of Canada	Archives nationales du Canada
National Farm Products Council	Conseil national des produits agricoles
National Library	Bibliothèque nationale
National Parole Board	Commission nationale des libérations conditionnelles
Office of the Chief Electoral Officer	Bureau du directeur général des élections
Office of the Commissioner for Federal Judicial Affairs	Bureau du commissaire à la magistrature fédérale
Office of the Commissioner of Official Languages	Commissariat aux langues officielles
Office of the Co-ordinator, Status of Women	Bureau de la coordonnatrice de la situation de la femme

Office of the Governor-General's Secretary	Secrétariat du gouverneur général
Office of the Grain Transportation Agency Administrator	Bureau de l'administrateur de l'Office du transport du grain
Office of the Superintendent of Bankruptcy	Bureau du surintendant des faillites
Offices of the Information and Privacy Commissioners of Canada	Commissariats à l'information et à la protection de la vie privée du Canada
Patented Medicine Prices Review Board	Conseil d'examen du prix des médicaments
Prairie Farm Rehabilitation Administration	Administration du rétablissement agricole des Prairies
Privy Council Office	Bureau du Conseil privé
Public Service Commission	Commission de la fonction publique
Royal Canadian Mounted Police	Gendarmerie royale du Canada
Royal Canadian Mounted Police External Review Committee	Comité externe d'examen de la Gendarmerie royale du Canada
Royal Canadian Mounted Police Public Complaints Commission	Commission des plaintes du public contre la Gendarmerie royale du Canada
Staff of the Federal Court	Personnel de la Cour fédérale
Staff of the Supreme Court	Personnel de la Cour suprême
Statistics Canada	Statistique Canada
Tax Court of Canada	Cour canadienne de l'impôt
Veterans Review and Appeal Board	Tribunal des anciens combattants (révision et appel)



